

**BRIEF FACTS OF THE CASE :**

M/s. N.K. Proteins Limited having their office situated at 7<sup>th</sup> Floor, Popular House, Ashram Road, Ahmedabad are importers of various kinds of oils like Cotton Seed oil, Soyabean oil, Palm oil etc. They are having a plant situated at Kadi-Thor Road, Kadi, District - Mehsana for refining and packing of such oils.

2. They filed Bill of Entry No. 297681 dated 03.07.2009 with Custom House, Kandla through their appointed Custom House Agent, M/s. Narendra Forwarders Pvt. Ltd., Gandhidham for clearance of 5069.51 MT of goods declared as "*Cotton Seed Oil of Edible Grade in Bulk (Fit For Human Consumption After Further Refining of Australian Origin)*". Other details mentioned in the said Bill of Entry were as detailed below:

Sr. No.	Description of declared goods	Quantity In MT	Declared Custom Tariff Heading	Declared Assessable Value (Rs.)	Duty (Rs.)	Exemption Notification claimed
1	Cotton Seed Oil of Edible Grade in Bulk (Fit For Human Consumption After Further Refining of Australian Origin)	5069.51	15122100 i.e. for Crude Cotton Seed Oil	22,52,44,167/-	NIL	Sl. No. 33A of Notification No. 21/2002- Cus dated 21/03/2002

3. An intelligence was received by the DRI that the said consignment of 5069.51 MT Cotton Seed Oil imported in bulk by M/s. N.K. Proteins Ltd. at Kandla was mis-declared and mis-classified under CTH 15122100 of Customs Tariff Act, 1975 as Crude Cotton Seed Oil in order to play a fraud on the government exchequer and evade payment of appropriate amount of Customs Duty as Crude Cotton oil attracts NIL rate of Customs duty and in fact the consignment was of edible grade which attracted Customs Duty;

4. Based on the said intelligence, the officers of DRI, took up investigation into the subject import by M/s. N.K. Proteins Limited and also recovered relevant import documents from them. From the documents taken over from customs authorities it emerged that M/s. N.K. Proteins Limited had purchased impugned goods from M/s. PEC Limited on High Sea Sale basis and filed Bill of Entry No. 297681 dated 03.07.2009 for clearance of the goods.

5. From the records obtained from Custom House, Kandla, it was seen that the Port Health Officer, Kandla, had drawn composite representative samples from cargo tanks of the vessel MT GOLDEN ORCHID, which brought the said goods at Kandla and sent them to Public Analyst, Food and Drugs laboratory, Baroda. He issued following four test reports in respect of these four representative samples of the impugned goods on 16/08/2010.

*"..... Sample No. PHK/E/174/2009 conforms to the standards and provisions as laid down under the Prevention of Food Adulteration Rules, 1955 for Crude Cotton Seed Oil."*

Further it was found that above mentioned report of PHO was based on the test report of Public Analyst Food and Drugs Laboratory, Baroda. The Public Analyst, had given his report on the said sample forwarded to him by the PHO. The test

report of Public Analyst was conveyed to the PHO vide report no. Q-3/150/2009 dtd. 09.07.2009 was as under :

“Physical Appearance : Yellowish coloured oily liquid giving odour of cotton seed oil

Label : Loose Sample

No.	Quality Characteristics	Name and method of test used	Result	Prescribed standards as per item A.17.02 of Appendix - B
3	B.R. Reading at 40° C	Refractometric method. Ref. ISI hand book	57.3	55.6 to 60.2
5	Iodine Value	Wij's method. Ref. ISI hand book	111.6	98-112
6	Acid Value	Titrimetric method Ref. ISI hand book	0.2	-----
8	Test for til Oil	Baudouin test. Ref. ISI hand book	Negative	Negative
9	Test for Cotton Oil	Halphen Test Method Ref. ISI hand book	Negative	Negative
11	Test for Mineral Oil, Castor Oil & Argemone Oil	TLC test. Ref. ISI hand book	Negative	Negative
12	Bellier Test	Acetic acid method. Ref. ISI hand book	21 deg. C	19 to 21 deg. C.
13	Free Fatty Acid %	0.15	-----	IS:548 (P-I) 1964

Opinion: In respect of the test performed above the sample of Crude Cotton Seed Oil (Imp.) conforms to the standards and provisions laid down under the of quality in above respect of P.F.A. Rules, 1955 for Cotton seed Oil.”

Kandla Customs assessed the Bill of Entry and allowed out of charge on 13.07.2009.

6. In all the above mentioned test report, it was seen that the Acid Value and Iodine Value were within the parameters laid down in PFA Rules. Therefore it appeared that the said goods were not “Crude” as declared by the importer but were in fact “Refined Cotton Seed Oil of Edible Grade”, appropriately classifiable under CTH 15122910. The relevant classification, tariff rate of duty, effective rate of duty and relevant notification number in respect of Cotton Seed Oil were as follows :

Sl. No	CTH	Item Description	Tariff Rate	Effective rate of duty	Exemption Notification No.
		- Cotton-seed oil and its fractions:			
(1)	15122100	--Crude Oil, whether or not gossypol has been removed	100%	NIL (All goods, crude AND edible)	21/2002 Sl. No. 33A
	151229	--other			
(2)	15122910	--- Edible grade	100%	7.5% (All Goods, refined AND edible grade)+ 2% Education Cess and	21/2002 (Sl. No. 33B)

				1% Secondary and Higher Education Cess	
(3)	15122990	--- Other	100%	-	-

7. It appeared from the above that the importer M/s N.K. Proteins Ltd. had sought to evade appropriate duty by suppressing that imported oil was actually Refined Cotton Seed Oil. It also appeared that the declaration of the importer that *the goods would be fit for human consumption after further refining* was a modus operandi to keep the subject goods out of the purview of “Refined Cotton Seed Oil” and to get it wrongly classified under CTH 15122100 with an intention to evade payment of appropriate customs duty. It also appeared, prima-facie, that the importer had intentionally got inserted the words “fit for human consumption after further refining” to show that the imported goods were of non-edible grade and would be made edible after further refining and to avail benefit of Circular No. 29/97-cus dated 31/07/1997 which defined the term “vegetable oils of edible grade” as *the vegetable oils which are fit for human consumption at the time of import and also the vegetable oils which are fit for human consumption after further processing.*

8. In pursuance of investigation, the following premises were searched by the officers of DRI:

8.1 The plant premises of M/s. N.K. Proteins Limited, situated at the above mentioned address were searched by the officers of DRI under Panchnama dated 04/10/2010 and 25 files and registers pertaining to imports of consignments of Cotton Seed Oil by them were recovered and withdrawn.

8.2 The office premises of M/s. N.K. Proteins Limited, situated at 3<sup>rd</sup> Floor, Popular House, Opposite Sales India, Ashram Road, Ahmedabad were searched by the officers of DRI under Panchnama dated 04/10/2010 and 3 files and one computer hard disc were recovered and withdrawn.

8.3 The office premises of M/s. N.K. Proteins Limited, situated at 2<sup>nd</sup> and 7<sup>th</sup> Floor, Popular House, Opposite Sales India, Ashram Road, Ahmedabad were searched by the officers of DRI under Panchnama dated 04/10/2010 and one computer system and 57 print outs of e-mails were recovered and withdrawn.

8.4 The office premises of M/s. PEC Limited, situated at Plot No. D-7, NU-10-B, Shakti Nagar, Gandhidham were searched by the officers of DRI under Panchnama dated 04/10/2010 and two files pertaining to import of Cotton Seed Oils were recovered and withdrawn.

8.5 The office premises of M/s. PEC Limited, situated at Plot No. 103, “Kaling Building”, Behind Bata Super Store, Near Mount Carmel School, Ashram Road, Ahmedabad were searched by the officers of DRI under Panchnama dated 04/10/2010, however, nothing was withdrawn from there.

8.6 The office premises of M/s. Sunvin Oil, situated at 1C, 6<sup>th</sup> Floor, Ketan Bhavan, Opposite Ritz Hotel, Church Gate, Mumbai were searched by the officers of DRI under Panchnama dated 12/10/2010 and two pen drives and one file were recovered and withdrawn.

9. M/s N.K. Proteins had filed the Bill of Entry No. 297681 dated 03.07.2009 and had shown that the transaction was a high sea sale transaction and they had purchased the goods from M/s P.E.C. Limited. However scrutiny of documents recovered and withdrawn during searches revealed that originally M/s N.K. Proteins had directly entered into a contract with M/s Cargill Australia Limited for

purchase of 5000 Mt of Cotton Seed Oil. Based on the same contract number S44852 dated 07/05/2010, M/s. N.K. Proteins Ltd. entered into the Novation Agreement dated 18.05.2009 with M/s. PEC Ltd., New Delhi and M/s Cargill Australia Limited. The said Novation Agreement clearly established that all the negotiations of quality, quantity and nature of goods were decided between M/s. N.K. Proteins Ltd., and M/s.Cargill Australia Ltd., vide Contract dated 14.05.2009. Thus it appeared that though the goods were shown in the Bill of Entry to have been purchased on high sea sale from M/s PEC limited, but the same were actually purchased by placing the said direct order on M/s Cargill Australia Limited by M/s N. K. Proteins Limited.

10. During the investigation, statements of following persons were recorded under Section 108 of the Customs Act, 1962 :

10.1 Statement of Shri Nileshbhai Keshavlal Patel, Managing Director of M/s. N. K. Proteins Limited was recorded under Section 108 of the Customs Act, 1962 on 07/10/2010, wherein he stated, inter alia, that he attended day to day work of M/s. N. K. Proteins Limited and his role was decision making for any activity of the company; that on being shown the records retrieved from his factory which shows that the goods imported vide Bill of Entry No. 297681 dtd. 03.07.2009 were refined oil as per parameters shown in his factory records; that he stated it was correct that the parameter like FFA, 0.056, Colour Y 8.3, M/v 0.10 R.I @ 40<sup>0</sup> C 1.4652, BTT 20.9 mentioned in their factory Pre-unloading reports Nos. 17,13,11,19 and 10 all dtd. 25.09.2009

During the recording of his statement, Shri Nilesh Keshavlal Patel, Managing Director of M/s. N.K. Proteins Ltd., was shown an e-mail addressed to AMANDA CARGIL. The text of the said email is as follows :-

“Subject: CONTRACT NO. S043188, DTD 14.05.2009, FOR 5000 MT COTTON SEED OIL OF EDIBLE GRADE IN BULK FIT FOR HUMAN CONSUMPTION.  
VESSEL ‘GOLDEN ORCHID’ CARRYING 5069.550 MT OF COTTON SEED OIL ON ITS WAY TO KANDLA.

WE HAVE TO FILE CUSTOM DOCUMENTS FOR CLEARANCE BUT OUR CUSTOM CLEARING AGENT HAS ADVISED US TO CHANGE DESCRIPTION OF CARGO AS CRUDE COTTON SEED OIL FOR REFINING (EDIBLE GRADE FIT FOR HUMAN CONSUMPTION AFTER REFINING)

THE FREE FATTY ACID CONTENTS OF THE CARGO IS ALSO TO BE MORE THAN 0.2% OTHERWISE, CUSTOM WOULD ASSESS THE GOODS AS REFINED OIL AND WILL BE SUBJECTED TO PAYMENT OF HEAVY AMOUNT AS CUSTOM DUTY. INFACIT, THE OIL CONTRACT IS FOR REFINING AND THEN ONLY TO BE CONSUMED FOR HUMAN CONSUMPTION. BUT BECAUSE OF PHRASES AND WORDING UNDER CUSTOM LAW, WE SEEK AMENDMENT/ YOUR CERTIFICATE FOR THE CARGO AS CRUDE COTTON SEED OIL HAVING FFA MORE THAN 0.2%.

WE ALSO NEED ANALYSIS REPORT COVERING ABOVE NARRATIONS. IN VIEW OF ABOVE, WE VERY SINCERELY REQUEST YOU TO FAVOUR US WITH THE CONTRACT COPIES, SHIPPING DOCUMENTS AS REQUESTED SO AS TO SAVE US FROM HEAVY FINANCIAL BURDEN WHICH MAY TAKE PLACE WHILE FILING DOCUMENTS WITH CUSTOMS.

WE ARE AWAITING YOUR FAVOURABLE REPLY AND REMAINS”

It therefore transpired that Shri Nilesh Patel had specifically instructed the overseas supplier to mention the word crude in the documents, for which the overseas supplier replied “***please be advised that Cargill considers***

***your request to alter documents as fraudulent and therefore will and cannot comply***". From this e-mail and reply to this e-mail it was evident that Shri Nilesh Patel had got changed the description of goods in the documents so as to facilitate him for mis-declaring the said cargo and the new words after refining were added to evade payment of appropriate customs duty. This e-mail was sent in relation to previous consignment of cotton seed oil imported by M/s N.K. Proteins from the same supplier. It appeared that the modus operandi evolved during the import of previous consignment of same commodity from the same supplier was also used in the import of goods covered in the Bill of Entry No. 297681 date 03.07.2009.

He had admitted that as per factory Pre-unloading reports Nos. 17,13,11,19 and 10 all dtd. 25.09.2009 and 11 dtd. 24.09.2009 the goods were Refined Cotton Seed Oil of Edible Grade. Therefore, M/s. N.K. Proteins Limited voluntarily paid duty amounting to Rs.1,74,00,112/- vide Challan / Pay order No. 085978 11/10/2010.

It became clear that the subject imported goods were Refined Cotton Seed Oil.

**10.2.** Further Statement of Shri Nileshbhai Keshavlal Patel, Managing Director of M/s. N. K. Proteins Limited was recorded under Section 108 of the Customs Act, 1962 on 09/10/2010, where he was shown all the test reports available with the department; he interalia stated that what he want to say on his earlier statement dated 07/10/2010 in which he stated that the CTH declared by them i.e. 15122100 is for crude cotton seed oil and in the said statement he confirmed that as pre unloading test reports of his factory the goods confirmed to the parameters of Refined Grade Cotton Seed Oil and stated that regarding other processes carried out on the imported goods, he will comment after verification from his records; he replied that the cotton seed oil procured by them from India is having FFA value less than 0.1% and as per trade practice all over India that oil is considered as Crude Cotton Seed Oil. As the FFA value of the oil imported by them covered in the Bill of Entry No 297681 dated 03/07/2009 was also same and therefore they have classified the goods as "Crude"; that as per the said IS:543-1968 issued by Bureau of Indian Standards goods are Refined cotton seed oil but as answered above as per trade practice the imported goods are Crude Oil and not refined oil; that during recording of his statement dated 07/10/2010 he was shown an e-mail which was retrieved from his computer under panchnama dated 04/10/2010. That E-mail was sent to their supplier Cargill Amanda and it was send from his e-mail id [nileshpatelnk@yahoo.com](mailto:nileshpatelnk@yahoo.com) on 27/06/2009. Regarding the same he answered that the he do not know how to operate the computer but the mail was sent from his computer and he was not aware about the same and will clarify it after investigation. On being asked about the above said e-mail he stated that as per Indian trade practices they were importing crude cotton seed oil. Their supplier was giving them the documents with the description "cotton seed oil of edible grade in bulk fit for human consumption after refining of Australian origin". They requested them that in spite of that description please use word "crude". As per his understanding both the description will be same. That in the said e-mail he has written "We have to file custom documents for clearance but our custom clearing agent has advised us to change description of cargo as Crude Cotton Seed Oil for Refining (Edible Grade Fit for Human Consumption after Refining), Who was their Custom House clearing agent and how he has advised the refereed text; he stated that their Custom House Clearing Agent was M/s Narendra Forwarders Pvt. Ltd. The advice was rendered to them telephonically.

**10.3** Statement of Dr. S. Senthil Nathan, Chief Medical Officer, PHO Kandla, was recorded under Section 108 of the Customs Act, 1962 on 12/10/2010 and 15/10/2010 wherein he stated, interalia, that he was working as Chief Medical officer in Port Health Organisation, Kandla; that the provisions for clearance of

edible items were that all the edible items had to conform to the PFA standards; that if the edible oil did not conform to PFA standards in testing at designated State Food Laboratory then the counterpart sample had to be sent to Designated Central Food Laboratory for final analysis; that for testing of food items imported at Kandla Port the Designated State Food Laboratory was Food and Drug Laboratory, Baroda and Designated Central Food Laboratory was CFL, Pune; that all the physical work related to the drawl of sample was done by the surveyor under his supervision; that the parameters for Refined Cotton Seed Oil of edible grade were given in item No. A 17.02 read with A 17.15 of appendix B of Prevention of Food Adulteration Rules, 1955; that the values for various parameters were as follows:-

Parameter	Value for the parameter
B. R. Reading at 40 degree centigrade	55.6 to 60.2
Iodine value	98-112
Acid value	0.5%
Saponification value	192-198
Unsaponifiable matter	Not more then 1.5%
Boiler test	19 <sup>0</sup> to 21 <sup>0</sup> C
Turbidity	No turbidity after keeping the filtered sample at 30 <sup>0</sup> C for 24 hours
Test for argemone oil	Shell be negative
Hexane	After refining hexane value should not be more then 5ppm
moisture	Not exceeding 0.10% by weight

that Cotton Seed Oil conforming to all the parameters mentioned in the above table would be "Refined Cotton Seed Oil of Edible Grade fit for Human Consumption."

**10.4** Statement of Shri Chetan Thakkar, Power of attorney of M/s Narendra Forwarders Pvt. Ltd., Gandhidham (CHA) was recorded under section 108 of the Customs Act, 1962, on 27.11.2010 wherein he stated, interalia, that he filed the B/E No. 297681 dated 03.07.2009 on behalf of M/s. N.K. Proteins Limited, Ahmedabad for clearance of the goods declared as Cotton Seed Oil of Edible Grade in Bulk (fit for human consumption after further refining of Australian origin) under CTH 15122100; that he was aware of the Customs Policies, Rules regulations; that the classification was provided by the importer and the same was verified at their end and the B/E was prepared accordingly; that he had not seen Indian standard IS:543-1968; that he was not a technical person, however, he had read the FFA, Acid Value, Iodine Value, etc. parameters in various customs notifications and circulars; that since he was not a technical person, he offhand cannot indicate limits of FFA, Acid Value, Iodine Value for the refined cotton seed oil as per Indian Standard (BIS) IS:543-1968 but if shown can read the same; that the sealed samples with sealed cover were handed over by the PHO to his Representative Shri Pyare Lal Bansal, who brought the samples to their office; that after that those samples with sealed cover were taken by his office peon Shri Appa by bus to Baroda; that the samples were sent to CFL, Pune through him; that the Sealed samples along with sealed covers were handed over by PHO to his representative Shri Pyare Lal Bansal, who brought the samples to his office; that after which the same were couriered through Bom-Gim couriers to Shri Amol F. Kadam of his office Narendra Forwarders Pvt. Limited, Office No. 02, First Floor, Prim Rose, The Mall, Near Dutta Mandir, Baner, Pune- 411045.

**10.5** Statement of Shri Chetan Thakkar, Power of attorney and G card holder of M/s Narendra Forwarders Pvt. Ltd. , Gandhidham (CHA) was recorded under section 108 of the Customs Act, 1962, on 07.02.2012 (**RUD No. 19**) wherein he

stated, inter alia, that he filed the B/E No. 297681 dated 03/07/2009 on behalf of M/s. N.K. Proteins Limited, Ahmedabad for clearance of the goods declared as Cotton Seed Oil of Edible Grade in Bulk (fit for human consumption after further refining of Australian origin) under CTH 15122100; that N.K. Proteins was his regular party and they are engaged in imports of C.P.O., Soybean Oil, from Kandla Port. Shri N.K. Gajjar is the contact person who intimates and instructs the arrival and clearance and contacted him for clearance of the goods imported by M/s. N.K. Proteins Limited, Ahmedabad vide B/E No. 297681 dated 03/07/2009; that as per the documents supplied by the party to him the description was Cotton Seed Oil of Edible Grade in Bulk (fit for human consumption after further refining of Australian origin) as per invoice and other documents like B/L and a letter dated July 03.09 forwarded to his company M/s. Narendra Forwarders Pvt. Ltd. by M/s. N.K. Proteins Limited, Ahmedabad in relation to Classification & filling of B/E of Cotton Seed Oil of Edible Grade wherein they have specifically mentioned the said cargo is of crude form for which one more declaration dated 03 July 2009 was attached and accordingly he filed the B/E No. 297681 dated 03/07/2009; that the classification of the goods at the time of filling the export- import document was verified at their end and the B/E is prepared accordingly as said in above reply of question; that Verification means the classification what importer has declared and on the basis of documents supplied, they verify the same with the CTH and prepare the documents accordingly; that he was shown the Statement of Shri Nileshbhai K Patel taken by DRI dated 09.12.2011 and question was asked after showing (a document recovered from his office) the e-mail from Nileshbhai Patel [nk@yahoo.com](mailto:nk@yahoo.com) to AMANDA CARGIL Copy to VENKATA CARGIL ; KAPIL SUNVIN Subject: Contract No. : S043188 DTD 14/05/2009 for 5000 MT Cotton Seed Oil of Edible Grade in Bulk fit for Human Consumption , wherein he has written that " We have to file custom documents for clearance but our **Custom Clearing Agent** has advised us to change description of cargo as CRUDE COTTON SEED OIL for refining (Edible grade fit for human consumption after refining)", and in reply of the question Shri Nileshbhai Patel again confirmed that the advice was rendered to them by their Clearing Agent, M/s Narendra Forwarders Pvt. Ltd.; he was asked what did he want to say, on this he replied that he wish to state that as mentioned earlier in his last statement he has not been shown and even not seen the said copy of email until it was shown to him last time during his statement dated 27.11.2010 and he wish to again reiterate that he had not advised any such comments neither on phone or in any other manner.

## 11. LEGAL ISSUES

11.1 Whether goods were Crude Cotton Seed Oil or Refined Cotton Seed Oil.

### 11.1.1 Goods were not Crude Cotton Seed Oil

(a) IS: 543-1968, issued by Bureau of Indian Standards, is an Indian Standard detailing the specifications for Cotton Seed Oil. This standard prescribed values for various characteristics of Cotton Seed Oil. The values for various parameters for CRUDE Cotton Seed Oil were as below:-

**Table- showing requirement for Cotton Seed Oil as IS:543-1968**

Sl. No.	Characteristic	Type of Extraction of Oil							
		Expressed				Solvent- Extracted			
		Refined Grade	Grade 1A (Washed)	Grade 1B (Washed)	Grade 2 (Raw)	Refined Grade	Semi- Refined grade	Grade 1 Raw	Raw

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
(i)	Moisture and insoluble impurities, present by weight, max	0.10	0.10	0.10	0.25	0.10	0.25	0.75	1.50
(ii)	Colour in a 1/4in cell on the lovibond scale, expressed as Y+10R not deeper than:								
	(a) Original Oil	10	25	35		14	35		
	(b) Bleached oil		8	15			15		
(iii)	Refractive index at 40 degree Centigrade	1.4630 to 1.4660							
(iv)	Specific Gravity At 30 degree Centigrade	0.910 to 0.920							
(v)	Saponification Value	190 to 198							
(vi)	<b>Iodine Value (Wijs)</b>	<b>98 to 115</b>							
(vii)	Acid Value, Max.	0.30	0.50	0.50	10.0	0.30	0.75	10.0	25.0
(viii)	Unsaponifiable matter, % by weight, Max.	1.50	1.50	1.50	2.00	1.50	1.50	2.00	2.50
(ix)	Refining Loss, % by Weight, Max.				15			15	40
(x)	Flash Point (degree Centigrade) min	Not Prescribed				250	125	100	90

From the above table it was evident that the values for various parameters of CRUDE Cotton Seed Oil are as follows:-

		Value for Crude Cotton Seed Oil	
		<b>Type of Extraction of Oil</b>	
Sl. No.	Characteristic	<b>Expressed</b>	<b>Solvent- Extracted</b>
(i)	Moisture and insoluble impurities, present by weight, max	MORE THAN .10 to 0.25	More than 0.25 to 1.50
(ii)	Refractive index at 40 degree Centigrade	1.4630 to 1.4660 ( Common for all grades of Cotton Seed Oil)	
(iii)	Specific Gravity At 30 degree Centigrade	0.910 to 0.920 ( Common for all grades of Cotton Seed Oil)	
(iv)	Saponification Value	190 to 198 ( Common for all grades of Cotton Seed Oil)	
(v)	<b>Iodine Value (Wijs)</b>	<b>98 to 115</b> ( Common for all grades of Cotton Seed Oil)	
(vi)	Acid Value, Max.	MORE THAN .50 to 10.0	MORE THAN 0.75 TO 25.0



(vii)	Unsaponifiable matter, % by weight, Max.	More than 1.5 to 2.0	MORE THAN 1.5 TO 2.0
(viii)	Flash point (degree Centigrade)	Not prescribed	Less than 125

(b) The sample of the subject goods was tested by the Public Analyst, Food and Drugs Laboratory, Baroda. Further, the samples of the subject goods were also tested by M/s. N. K. Proteins Ltd. for each tanker received by them at their factory premises. The values for various parameters of Crude Cotton Seed oil as per **IS:543-1968** and the values reported in the test report of Public Analyst and in the records of M/s. N.K. Proteins Ltd. were as below :-

Sl. No.	Parameter	Expressed	Solvent-Extracted	Value reported by the Public Analyst, Baroda vide his test report dtd. 09.07.2009	Value mentioned in the records of M/s. N. K. Proteins Ltd.
(i)	Moisture and insoluble impurities, present by weight, max	>0.50	>0.75	Not tested	0.10
(ii)	Refractive index at 40 degree Centigrade**	1.4630 to 1.4660 (common values for all grades)		57.3 *	1.4648/1.4649/1.4650/1.4651/1.4652 (all values within the range of 4.4630 to 1.4660)
(iii)	Specific Gravity At 30 degree Centigrade	0.910 to 0.920 (common values for all grades)		Not tested	Not monitored
(iv)	Saponification Value	190 to 198 (common values for all grades)		Not tested	Not monitored
(v)	<b>Iodine Value (Wijs)</b>	<b>98 to 115</b> (common values for all grades)		111.6	>112.70 to < 114
(vi)	Acid Value, Max.	>0.50	>0.75	<b>0.2</b>	<0.1
(vii)	Unsaponifiable matter, % by weight, Max.	1.5	1.5	Not tested	Not monitored
(viii)	Flash point (degree Centigrade)	Not prescribed	Min 250	Not tested	Not monitored

[\*\* Corresponding parameter is Butyro- Refractometer Reading at 40 degree centigrade (i.e. B.R. Reading) and the corresponding value for the parameter in terms of B.R. Reading is 55.6 to 60.20.]

(c) From the table above it was seen that the goods imported by M/s. N. K. Proteins Limited were not Crude Cotton Seed Oil as the values reported in all the test reports were for Cotton Seed Oil of refined quality, and that the imported consignment was not Crude cotton seed oil. The importer M/s. N. K. Proteins Limited had deliberately misclassified the goods under CTH 15122100 (i.e. for

Crude Cotton Seed Oil) with an intention to evade the payment of duty on the imported consignment.

### 11.1.2 Good were Refined Cotton Seed Oil

(a) As per IS:543-1968 the values for various parameters the Refined Cotton Seed Oil were as follows:-

		Value for Refined Cotton Seed Oil	
		<b>Type of Extraction of Oil</b>	
Sl. No.	Characteristic	<b>Expressed</b>	<b>Solvent- Extracted</b>
(i)	Moisture and insoluble impurities, present by weight, max	0.10	0.10
(ii)	Colour in a 1/4in cell on the lovibond scale, expressed as Y+10R not deeper than:		
	(a) Original Oil	10	14
	(b) Bleached oil	Not prescribed	
(iii)	Refractive index at 40 degree Centigrade**	1.4630 to 1.4660 ( Common for all grades of Cotton Seed Oil)	
(iv)	Specific Gravity At 30 degree Centigrade	0.910 to 0.920 ( Common for all grades of Cotton Seed Oil)	
(v)	Saponification Value	190 to 198 ( Common for all grades of Cotton Seed Oil)	
(vi)	<b>Iodine Value (Wijs)</b>	<b>98 to 115</b> ( Common for all grades of Cotton Seed Oil)	
(vii)	Acid Value, Max.	0.30	0.30
(viii)	Unsaponifiable matter, % by weight, Max.	1.5	1.5
(ix)	Flash point (degree Centigrade)	Not prescribed	Min 250

[\*\* Corresponding parameter is Butyro-Refractometer Reading at 40 degree centigrade (i.e. B.R. Reading) and the corresponding value for the parameter in terms of B.R. Reading is 55.6 to 60.20.]

From the table above it was evident the consignment in question was not Crude Cotton Seed oil but Cotton Seed Oil which had undergone the process of refining.

### (b) The Supplier's Web Site

The supplier of the goods was M/s Cargill Australia Limited. Web site of the supplier was <http://www.cargill.com.au/australia/en/home/index.jsp>. Browsing of this page took to the home page of the supplier and on this page a link for product and services was given. This link showed the following contents:

- **Products & Services**
  - **Beef**
  - **Cotton**
  - **Food Ingredients**
  - **Flour Milling / Allied Mills**
  - **Grain & Oilseed Merchandising**
  - **Grain Storage and Handling**
  - **Grower Services/AGA**
  - **Refined Oils**
  - **Risk Management**
  - **Cargill Japan Limited - Australian Trading Office**

From the above link it was evident that supplier was in the business of refined oil only and Cotton Seed Oil was mentioned as follows:-

*Oils*

*Since June 2007 Cargill Australia has produced and marketed the following refined, bleached and deodorised (RBD) vegetable oils. For Product Data Sheets please contact us*

**RBD Cotton seed Oil**

**Product Description:** *Liquid oil consisting of refined, bleached and deodorised cotton seed oil, which has been processed in accordance to best refining practice and conforms to FSANZ Food Standards Code and relevant State Health Acts.*

*The product is clear and pourable at room temperature. The product may become cloudy when exposed to temperatures below 10 °C.*

**Application:** *Premium oil for use as a food ingredient and for deep and shallow frying applications.*

**Country of Origin:** *Made in Australia from local and imported ingredients.*

**Product Specification:** *RBD Cotton seed Oil*

From the above contents of the website of the supplier it was evident that supplier dealt in only refined, bleached and deodorised (RBD) vegetable oils and had supplied to the importer M/s. N. K. Proteins Limited Refined cotton Seed oil only. Therefore, the deposition of Shri Nilesh Patel, MD of M/s. N.K. Proteins in his statement dated 07/10/2010 that they had placed order for Crude Cotton Seed Oil only, did not hold any water. He had however accepted that as per the pre-unloading reports shown to him, the goods were Refined Cotton Seed Oil and deposited duty leviable on Refined Cotton Seed Oil.

(c) During search of factory premises of the importer, records were recovered under panchnama dated 04/10/2010. A FINAL SAMPLE REGISTER, showing the values for various parameters of final Refined Cotton Seed oil, was also recovered. Scrutiny of this register revealed that M/s N.K. Proteins were monitoring the following parameters in their final product i.e. Refined Cotton seed oil. The table below showed the values for those parameters (list is not exhaustive but illustrative only):

Sl. No.	Sl. No of the Final Sample Register	FFA (i.e. Free Fatty Acid)	Acid Value (not mentioned in register but calculated by DRI as 2 times of FFA)	Refractive Index	Colour	P.V. (Peroxide Value)	Vitamin
1	2	3	4	5	6	7	8
1	1	0.060	0.12	1.4645	7.5	0.65	Positive
2	4	0.055	0.11	1.4647	8.7	0.55	Positive
3	7	0.052	0.10	1.4646	9.3	0.70	Positive
4	16	0.047	0.094	1.4644	9.0	0.75	Positive
5	30	0.050	0.10	1.4644	9.4	0.60	Positive
6	32	0.070	0.14	1.4646	9.5	0.65	Positive
7	56	0.058	0.11	1.4646	13.2	0.80	Positive
8	63	0.064	0.12	1.4642	13.0	1.05	Positive
9	75	0.060	0.12	1.4642	11.0	0.90	Positive
10	95	0.065	0.13	1.4644	11.5	0.78	Positive
11	107	0.067	0.13	1.4643	9.8	0.90	Positive
12	117	0.075	0.15	1.4642	11.2	0.65	Positive

13	130	0.072	0.14	1.4644	11.4	0.75	Positive
14	149	0.075	0.15	1.4642	11.4	1.50	Positive
15	163	0.050	0.10	1.4644	11.3	1.75	Positive
16	165	0.062	0.12	1.4644	11.0	1.05	Positive
17	176	0.072	0.14	1.4646	12.3	0.74	Positive
18	186	0.053	0.10	1.4645	12.4	0.80	Positive

The sample register clearly showed that only Free Fatty Acid, Refractive Index, Colour, Peroxide Value and vitamin were monitored by the Importer before selling the goods in the market and they were not monitoring any other parameter. The following table show the values for above parameters in respect of the consignment imported by M/s N.K. Proteins Limited:

Sl. No.	Parameter	Value reported by the Public Analyst, Baroda vide his test report dtd. 09.07.2009	Value mentioned in the records of M/s. N. K. Proteins Ltd.	Range in the Final Sample Register of the importer	Values prescribed in <u>IS:543-1968</u> for refined cotton seed oil
1	Acid Value	0.2	<0.1	0.080 to 0.180	0.30
2	FFA (i.e half of Acid Value)	0.01	<0.05	0.040 to 0.090	0.15
3	Refractive index**	57.3*	1.4648/1.4649/1.4650/1.4651/1.4652(all values within the range of 1.4630 to 1.4660)	1.4640 to 1.4646	1.4630 to 1.4660
	Colour	Not reported	Not monitored	7.3 to 13.2	10/14
	Peroxide Value (P.V.)	Not tested	Not monitored	0.35 to 2.15	Not prescribed
	Vitamins	Not reported	Not monitored	positive	Not prescribed

[\*\* Corresponding parameter is Butyro- Refractometer Reading at 40 degree centigrade (i.e. B.R. Reading) and the corresponding value for the parameter in terms of B.R. Reading is 55.6 to 60.20.]

(d) The Importer had classified the goods under CTH 15122100 as crude and claimed exemption provided under serial no. 33A of Notification no. 21/2002 dated 21/03/2002 for all goods, Crude and Edible. This exemption was inter alia for All Goods, falling under CTH 1512, Crude and Edible. The importer had declared description of goods as "Cotton Seed Oil of Edible Grade in Bulk (Fit For Human Consumption After Further Refining of Australian Origin)", which clearly indicated that the same were refined at the time of its importation but for making them fit for human consumption, they required further refining. However, from the above discussion, it appeared that the said goods were refined but of Non-Edible Grade at the time of their import. It, therefore, appeared that the said importer had wrongly availed the benefit of Notification 21/2002-Cus dated 21/03/2002 by willfully mis-declaring the impugned goods before the customs authorities at the time of import with intention to evade payment of customs duty leviable thereon.

As per the test results of the test conducted by M/s. N. K. Proteins Ltd, the goods conform to the standards of Cotton Seed Oil as per PFA Rules, 1955, **except of minor variation in Iodine value. But at the same time goods were tested by Public Analyst, Food and Drugs Laboratory, Baroda who in his report clearly opined that “the samples CONFORMS to the standards and provisions laid down under the Prevention of Good Adulteration Rules, 1955. Therefore, as Public Analyst, Food and Drugs Laboratory, Baroda is an approved authority for testing of food articles and it is settled position that when there are conflicting reports available reliance will be placed on the Government Laboratory. Therefore, in the present case it was rightfully assumed that the test report submitted by Public Analyst, Food and Drugs Laboratory, Baroda is correct.**

Supplementary Note 1 to Chapter 15 of the Customs Tariff of India defines ‘Edible Grade’ as under:

*“1. In this Chapter, “edible grade”, in respect of a goods (i.e. edible oil) specified in Appendix B to the Prevention of Food Adulteration Rules, 1955, means the standard of quality specified for such goods in that Appendix.”*

As discussed in the foregoing para, the impugned imported goods were not in conformity with the standards of quality specified in PFA Rules, 1955 and thus the goods was *Refined Cotton Seed Oil* of Edible Grade. It therefore appeared that the impugned goods can be classified as *Refined Cotton Seed Oil (Edible Grade)* and such goods fell under the CTH 15122910.

#### **Duty structure:**

Cotton Seed oil was either of edible Grade or Non Edible grade. “Edible Grade” was defined in Supplementary Note 1 to Chapter 15 of the Customs tariff of India as under “Edible Grade”, in respect of a goods (i.e. edible oils) Specified in Appendix B to the Prevention of Food Adulteration Rules, 1955, means the goods which meet the standard of quality specified for such goods in that Appendix.

Accordingly the table below showed the classification and applicable rate of duty in respect of all the categories of Cotton Seed Oil:-

**TABLE-6**

Category of goods	As per tariff	Exemption	Effective rate
Raw (Crude)	Edible 15122100	Serial No.33A of Notification No. 21/2002 (All Goods Crude AND Edible Grade)	NIL
	Non-edible 15122100	No Exemption *	100%
Refined Grade	<b>Edible 15122910</b>	<b>Serial No.33B of Notification No. 21/2002 (All Goods Refined AND Edible Grade)</b>	<b>7.5%</b>
	<b>Non-edible 15122990</b>	<b>No Exemption *</b>	<b>100%</b>

As per above para, the goods imported by M/s. N.K. Proteins Ltd., were refined cotton seed oil of edible grade classifiable under CTH 15122910 chargeable to basic customs duty @7.5%, as per the above Table in addition to 2% Education Cess + 1% Secondary & Higher Education Cess. The assessable

value of the goods cleared vide Bill of Entry No.297681 dtd. 03.07.2009 was Rs,225244167/-. Thus, the quantum of duty evaded was Rs. 17400111.

**12.** The test report No. Q-3/150/2009 dated 09.07.2009 issued by the Public Analyst, Food & Drugs Laboratory, Vadodara, categorically revealed that the subject imported consignment conforms to the standards of quality prescribed for Cotton Seed Oil, under item A-17.02 of Prevention of Food Adulteration Rules, 1955. From the said test it was also evident that the subject imported goods were not to be classified as goods covered under 'Crude Oil of Edible Grade' but the same were correctly classifiable as 'Refined Cotton Seed Oil of Edible Grade' under CTH 15122910. The importer had described the impugned goods as *Cotton Seed Oil of Edible Grade in Bulk (Fit for Human Consumption after further Refining of Australian Origin)* in the corresponding Bill of Entry, which itself indicated that the impugned goods were refined at the time of importation.

From the above, it was evident that M/s. N. K. Proteins had declared the impugned goods to be Crude Cotton Seed Oil of 'Edible Grade' with an intention to clear the same without payment of duty by seeking classification under CTH 15122100 and claiming benefit of Sl.No.33A of Notification No.21/2002-Cus dated 21.03.2002. The said mis-declaration in respect of description and classification of the subject imported goods by M/s. N. K. Proteins Ltd. in Bill of Entry No. 297681 dated 03.07.2009 clearly rendered the 5069.51 MT of Cotton Seed Oil in question declared assessable value of Rs.22,52,44,167/-, liable to confiscation under Section 111(m) of the Customs Act, 1962.

**13.** As above discussed test report No. Q-3/150/2009 dtd. 09.07.2009 issued by Public Analyst, Food & Drugs Laboratory, Vadodara, categorically reveals that the impugned goods conforms the standards of quality prescribed for Cotton Seed Oil, under A-17.02 of the PFA Rules, 1955. The above discussed test reports and evidences clearly reveal that the subject imported goods were not 'Crude' in nature and it also emerges that the subject imported goods cannot be classified under CTH 15122100 as 'Crude Oil of Edible Grade' but the same are correctly classifiable under CTH 15122910 as 'Refined Cotton Seed Oil of Edible Grade'. Further, an e-mail recovered from their office clearly showed that M/s. N K Proteins were fully aware that goods supplied by M/s Cargill Australia Limited were not 'crude'. The e-mail clearly showed that despite knowing actual description of the impugned goods, they attempted to convince the supplier to incorporate the word "CRUDE" in the description of the goods. Thus, it was evident that M/s. N. K. Proteins were fully aware of the fact that the subject imported goods were not 'Crude' but he had deliberately mis-classified them under CTH 15122100 (as Crude) in Bill of Entry No. 297681 dtd. 03.07.2009 with an intention to evade payment of duty amounting to Rs.1,74,00,111/- by wrongly claiming benefit of Sl.No. 33A of Notification No. 21/2002- Cus dated 21/03/2002. This deliberate act of clearing the impugned 'goods evading customs duty amounting to Rs. 1,74,00,111/-by way of mis-declaration in Bill of Entry No. 297681 dated 03.07.2009 clearly amounts to collusion and suppression of facts on the part of MIs. N. K. Proteins Ltd. In the light of above facts and circumstances, the provision enumerated in Section 28(4) of the Customs Act, 1962 for invoking extended period of demand is squarely attracted in this case. Therefore, the customs duty amounting to Rs. 1,74,00,111/- is liable to be demanded from MIs. N. K. Proteins Ltd. under Section 28(4) of the Customs Act, 1962 along with interest under Section 28AA *ibid*.

14. Further, the importer had contravened the provisions of Section 46 of the Customs Act, 1962, read with section 11 of Foreign Trade (Development & Regulation) Act, 1992 and Rule 11 of Foreign Trade (Regulation) Rules, 1993. Therefore, the subject 5069.51 MT of Cotton Seed Oil having declared assessable value of Rs.22,52,44,167/- was liable to be confiscated under section 111(d) of Customs Act, 1962 read with section 11 of Foreign Trade (Development & Regulation) Act, 1992 and Rule 11 of Foreign Trade

(Regulation) Rules, 1993. In view of their various acts of commission and omission as discussed in detail above, which rendered the impugned goods liable to confiscation under section 111(d) and 111(m) of the Customs Act, 1962 read with Foreign Trade (Development & Regulation) Act, 1992, and Foreign Trade (Regulation) Rules, 1993, M/s. N.K. Proteins Ltd. had rendered themselves liable to penalty under Section 112(a) of the Customs Act, 1962. Further, the above discussed act of deliberate mis-declaration of description and classification of goods with intention to evade customs duty has rendered M/s.N. K. Proteins Ltd. liable to penalty under Section 114A of the Customs Act, 1962.

**15.** Shri Nileshbhai Keshavlal Patel was the Managing Director of M/s. N. K. Proteins Ltd. He used to attend day to day work and his role was decision making for any activity of M/s. N. K. Proteins Limited. He stated in his statement dated 07/10/2010 that he had ordered for Crude Cotton Seed Oil only. However, all the test reports revealed that the subject imported goods were not 'Crude' in nature. As admitted by himself in his said statement, he was the only decision making person in M/s. N. K. Proteins Ltd., **it was obvious that he was not aware of actual description of imported goods. Thus it appeared that he had ordered for importation of the subject imported goods, although shown to have been purchased on high sea sale from M/s PEC limited, the documents and e-mails recovered from importer showed that the order was directly placed on M/s Cargill Australia Limited by Shri Nilesh Patel himself.** An e-mail recovered from his office clearly showed that he was aware that goods supplied by M/s Cargill Australia Limited were not crude and also made mail communications to convince the said supplier to include the word "CRUDE" in the description of the goods. Therefore, he was fully aware of the fact that the subject imported goods were not 'Crude' but he had deliberately mis-classified them under CTH 15122100 (as Crude) with an intention to evade payment of duty due thereon. It was clear that the importer had imported cotton seed oil which was not conforming to the standards laid down under item A.17.02 of PFA Rules, 1955. The said acts of omissions and commissions, on his part rendered the subject 5069.51 MT of Cotton Seed Oil having declared assessable value of Rs.22,52,44,167/- liable to confiscation under Section 111 (d) and (m) of the Customs Act, 1962 and therefore penalty under Section 112(a) of the Customs Act, 1962 was clearly attracted against him.

**16.** M/s. Narendra Forwarders Pvt. Ltd. was the Custom House Agent who was engaged by M/s. N. K. Proteins Ltd. for the clearance of the subject imported goods. Being CHA they were bound to show due diligence in their work and advise the importer to comply with the provisions of the Customs Act, 1962. Shri Chetan Thakkar, Power of Attorney Holder of M/s. Narendra Forwarders Pvt. Ltd., in his statement recorded on 27/11/2010, gave evasive replies such as 'he was not a technical person'. It was a fact that incriminating evidence in the form of e-mail sent by M/s. N.K. Proteins Ltd to the supplier i.e. M/s. Cargill Australia Ltd., which talked about advice of their CHA to mis-declare the description of the goods in order to evade customs duty, was recovered in respect of import of the Cotton Seed Oil imported vide Bill of Entry No.297681 dtd. 30.07.2009. M/s Narendra Forwarders Pvt. Ltd., had actively connived with the importer in getting subject imported goods mis-declared as 'Crude' and mis-classified under CTH 15122100 (as Crude) with an intention to evade duty. The said acts of omissions and commissions, brought out in various statements, facts and discussion in the above paras, on their part rendered the subject 5069.51 MT of Cotton Seed Oil having declared assessable value of Rs.22,52,44,167/- liable to confiscation under Section 111(d) and (m) of the Customs Act, 1962 read with Foreign Trade (Development & Regulation) Act, 1992, and Foreign Trade (Regulation) Rules, 1993, and therefore, M/s. Narendra Forwarders Pvt. Ltd. were liable for penalty under Section 112(a) of the Customs Act, 1962. M/s. Narendra Forwarders Pvt. Ltd. failed in their duty which resulted in evasion of Customs Duty in spite of the fact that they being Licensed Custom House Agent, as per provisions of

regulation 13 of the Customs House Agents Licensing Regulations, 2004, were under an obligation to advise their client to comply with the provisions of the Customs Act and in case of non-compliance by them, to bring the matter to the notice of the Deputy/Assistant Commissioner of Customs. They are under further legal obligation to exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage. But M/s. Narendra Forwarders Pvt. Ltd. has not only failed in complying with legal obligation cast upon them but also has actively advised his client to mis-declare the goods for evading payment of Customs Duty. Further; during recording of his statement, he has rendered evasive replies with an intention of misleading the investigation. Therefore M/s. Narendra Forwarders Pvt. Ltd. has rendered themselves liable for action under the regulation-20 of the Customs House Agents Licensing Regulations, 2004.

**17(1)** Therefore, a notice bearing F.No.DRI/AZU/Misc.-44/2010 Pt.II dated 27.05.2013 was issued by the Additional Director General, Directorate of Revenue Intelligence, Ahmedabad to M/s. N. K. Proteins Ltd., Ahmedabad asking them to show cause as to why:-

- (i) Classification of 5069.51 MT of Cotton Seed Oil in question, having assessable value as Rs. 22,52,44,167/-, declared as *cotton seed oil of edible grade in bulk (fit for human consumption after further refining of Australian origin)* and classified under CTH 15122100 in the Home Consumption Bill of Entry No.297681 dated 03.07.2009, should not be rejected and re-classified under the Customs Tariff Heading 15122910 as refined cotton seed oil of edible grade, denying the benefit of Serial No. 33A of Notification No. 21/2002- Cus dated 21/03/2002.
- (ii) 5069.51 MT of Cotton Seed Oil in question having a declared assessable value of Rs.22,52,44,167/-, attempted to be cleared under Home Consumption Bill of Entry No. 297681 dated 03.07.2009 should not be confiscated under Section 111 (d) and (m) of the Customs Act, 1962, read with Foreign Trade (Development and Regulation) Act, 1992 and Foreign Trade (Regulation) Rules, 1993.
- (iii) Customs duty amounting to Rs. 1,74,00,111/-on the 5069.51 MT of Cotton Seed Oil covered under Bill of Entry NO.297681 dated 03.07.2009, should not be demanded and recovered from them under Section 28 (4) of the Customs Act, 1962 along with applicable interest under Section 28 AA of the Customs Act, 1962 (erstwhile Section 28 AB of Customs Act).
- (iv) The amount of Rs. 1,74,00,111/-already paid by them against their duty, liability under Bill of Entry No. No. 297681 dated 03.07.2009 should not be adjusted and appropriated against their duty liability mentioned at (iii) above.
- (v) Penalty should not be imposed on them under Section 112(a) of the Customs Act, 1962 for the acts of commission and omission as discussed above.

**17(2)** Shri Nileshbhai Keshavlal Patel, Managing Director of M/s. N. K. Proteins Ltd., was called upon to show cause as to why penalty should not be imposed upon each of them under Section 112(a) of Customs Act, 1962 for the reasons given in the foregoing paras.

**17(3)** M/s. Narendra Forwarders Pvt. Ltd., Custom House Agent were also called upon to show cause as to why :-



- (i) penalty should not be imposed upon each of them under Section 112(a) of Customs Act, 1962 for the reasons given in the foregoing paras.
- (ii) Action under Regulation 20 of the Customs House Agents Licensing Regulations, 2004 should not be taken for the reasons given in the foregoing paras.

### **DEFENCE :**

18. M/s. N.K. Proteins Ltd., vide reply dtd.nil, *inter alia*, stated that

(i) the imported cottonseed oil is not refined oil, as at the time of import the imported cottonseed oil did not satisfy the parameters of refined oil prescribed in the PFA standards. The refined vegetable oil is defined under item A. 17.15 of PFA Rules. The definition of refined vegetable is extracted and reproduced as under :

**A.17.15.---REFINED VEGETABLE OIL** means any vegetable oil which is obtained by expression or solvent extraction of vegetable oil bearing materials, de-acidified with alkali and/or physical refining and / or by miscella refining using permitted food grade solvents followed by bleaching with absorbent earth and/or carbon and deodourised with steam. No other chemical agent shall be used. The name of the vegetable oil from which the refined oil has been manufactured shall be clearly specified on the label of the container. In addition to the under-mentioned standards, to which refined vegetable oils shall conform to the standards prescribed in these rules for the specified edible oil shall also apply except for acid value which shall be not more than 0.5. Moisture shall not exceed 0.10 per cent by weight;

(ii) that IS: 543-1968 provides for specification for cottonseed oil; that it provides for various types of cottonseeds oils; that from the terminology, types and grade it is evident that following major processes have to be followed for refining the vegetable oil: a) Deacidification with alkali/ physical refining miscella refining: b) Bleaching with absorbent earth Carbon c) Deodourised with steam; that they have imported "*Prime bleachable summer yellow cottonseed oil (NCPA Trade Rule 162)*" and same is clearly mentioned in the contract itself. Relevant part of the NCPA Rule 162 defining prime bleachable summer yellow cottonseed oil is as under:

*RULE 162: Prime Bleachable Summer Yellow Cottonseed Oil. Prime bleachable summer yellow cottonseed oil must be reasonably free from visible foreign material, clear at temperatures sufficiently high to melt the stearine, sweet in flavor and odor, and when bleached in the laboratory in accordance with NCPA Rule 405, Section 4, shall be of a color no higher than AOCS 2.5, and shall contain not more than 0.25 percent free fatty acid nor in excess of 0.10 percent moisture and volatile matter.*

That from the reading of the above it is evident that the *prime bleachable summer yellow cottonseed oil* is not bleached nor deodorized. Therefore, the said variety of oil is considered as crude oil.

(iii) that after importation the noticees have undertaken the refining process of the imported cottonseed oil. The same is evident from the parameters of the imported cottonseed oil and the cottonseed which is cleared from the factory of the noticees. (affidavit of Technical Person Incharge of the noticees is enclosed as Annexure-~ Thus from the above it is evident that the imported cottonseed is not of refined grade and the same is of crude grade only. As per test reports the imported cottonseed oil is not refined oil in order to treat the goods in question as refined oil the oil must satisfy standards mentioned in the PFA Rules for vegetable refined oil. The test reports of the Food and drugs laboratory vadodara clearly shows that imported cottonseed oil is not of refined grade. At the cost of repetition, details of test report is as under :

a) The Public Analyst, Food and Drugs Laboratory, Vadodara vide test report dated 09.07.2009 opined that samples conform to the standards of cottonseed oil as per PFA Rules, 1955 for cotton seed oil and can be used only after proper cleaning and refining and confirming to the standards as laid down under item A-17.15 of Appendix B to P.F.A. Rules 1995. It also provides that imported oil is of Yellowish coloured oily liquid giving of odor of cottonseed oil

b) The *PHD*, Kandla vide letter dated 10.07.2009 has concluded that the sample confirms to the Standards and Provisions as laid down under the Prevention of Food Adulteration Rules, 1955 for crude cottonseed oil. From the above following conclusions may be drawn that imported cottonseed oil is not refined oil:

That in view of the above

a) Imported cottonseed oil cannot be used directly for human consumption therefore not refined oil;

b) Imported cottonseed oil has yellow colour and odor of cottonseed oil therefore oil is not bleached and deodorised, therefore not refined oil;

c) *PHD* kandla has clearly concluded that imported oil is crude oil.

That from the above it is evident that above reports clearly show that the imported cottonseed oil do not satisfy the PFA standards in respect of refined vegetable oil. Therefore, it cannot be considered to be refined oil. That the proposals in the SCN that imported cottonseed oil as of refined grade is not sustainable in law; that the noticees requested for cross examination of the chemical examiners/ public analyst, food and drugs laboratory Vadodara *PHD*, Kandla to find out that the imported cottonseed oil is of crude grade or refined grade Imported cottonseed oil is "crude oil"

(iv) That the term 'Crude' is not defined in the Custom Tariff Act or in the Customs Notification No. 21/2002-Cus dated 1.03.2002. However Explanatory Notes to the HSN for heading 1512.11 Sub Heading 15.07.10 which defines crude as under :

**Sub Heading 15.07.10**

fixed vegetable oils, fluids or solid obtained by pressure are to be considered as 'crude' if they have undergone no processing other than decantation, centrifugation or filtration .; provided that, in order to separate the oils from solid particles only mechanical force, such as gravity, pressure or centrifugal force has been employed, excluding any absorption filtering process, fractionation or any, other physical or chemical process. If obtained by extraction an oil shall continue to be considered as "crude" provided it has undergone no change in colour, odour or taste when compared with the corresponding oil obtained by pressure.; that it is evident that above Explanatory Note to the HSN defines crude oil in two categories/parts. One part is in respect of vegetable oil obtained by pressure and second part is in respect of vegetable oil obtained by solvent extraction that in respect of vegetable oil obtained by pressure, processes of decantation, centrifugation or filtration would be permitted for being considered as crude oil however, processes such as absorption filtering or fractionation or other physical or chemical process would exclude the oil from the crude grade; that if oil is obtained by solvent extraction, the oil continue to be considered as crude if there is no change in colour, odor or taste when compared with the corresponding oil obtained by pressure. Thus even if physical or chemical processes are undertaken on the solvent extracted vegetable oil but as long as the colour, odor or taste remains the same when compared with the corresponding oil obtained by pressure, the vegetable oil obtained by solvent extraction remains the crude oil; that, the imported cottonseed oil was obtained by solvent extraction method and it contains the colour, odor and taste that of cottonseed oil. As submitted in above para in view of the test report the imported cottonseed oil has yellow colour and odor of cottonseed oil thus imported cottonseed oil is crude oil. Therefore, it is submitted that imported cottonseed oil is of crude grade and benefit of exemption notification No. 21/2002-Cus (Sr. No.33A) is available to the

noticee.

(v) that the bill of entry is finally assessed on 3.07.2009, however, SCN was issued on 27.05.2013 demand is beyond period of limitation. Proposal to invoke extended period of limitation is not sustainable. Because the noticees has correctly provide declaration in the bill of entry. The declaration was found to be correct even after testing of imported goods. At the time of assessment goods have been examined and tested. Thus there is not mis declaration on part of the noticees. Thus entire demand is barred by limitation. Imported Goods Are Not Liable To Confiscation, either under Section 111(d) or (m); that Section 111(d) is applicable only when the goods are imported or attempted to be imported contrary to any prohibition imposed under the Customs Act or any other law for the time being in force. There is no prohibition or restriction on the import of the goods in question. These goods are otherwise freely importable under the Foreign Trade Policy; That there was no prohibition or restriction either under the Customs Act or under any other law as well. There is no notification under Section II of the Customs Act by which the imported goods were notified as prohibited goods. Therefore, the confiscation of the imported goods Under Section 111(d) of the Customs Act, 1962 is not sustainable in law. That the section 111(m) provides for confiscation of any goods, which do not correspond in respect of value or in any other particular with the entry made under the Act. that for the reasons given in the foregoing paragraphs, there was no mis-declaration either in respect of value or in any other particular with the entry made under the Customs Act and therefore, the provisions of the said section are not attracted to the case of the noticee; that Section 125 of the Customs Act provides for an option on part of the importer to redeem the confiscated goods upon payment of redemption fine. It clearly follows that the importer is liable to pay redemption fine only when the goods are confiscated. that the confiscation under Section 111 is not applicable. Consequently, any proposal to impose redemption fine is also not sustainable; that, under section 125, fine is imposable in situation where goods are available for confiscation, therefore fine under Section 125 is not imposable.

(vi) The department has relied upon the email dated 27.06.2009, send by the noticee to the foreign supplier, to contend that the noticees have specifically requested the foreign supplier to change the description of the goods covered in the previous consignment of the imported 5069.550 MT of cotton seed oil, imported vide vessel golden orchid. The noticees submit that the noticees requested the foreign supplier to make description of the goods only as per the contract entered between them and foreign supplier. The email was written to clarify that the contract with the foreign supplier is for the import of oil for further refining. that the email shows that the noticees intended to import only crude cotton seed oil from the foreign supplier. In any case the said email cannot be relied upon in this case because the foreign supplier did not change the description of the cargo.

(vii) that for the reasons given in the foregoing paragraphs, the demand of duty is not sustainable in law. Once the demand of duty is found to be non-sustainable, the question of levy of penalty does not arise. As per the provisions of Section 112(a) of the Customs Act, penalty is imposable on any person who in relation to any goods, does or omits to do any act which act or omission would render abetted the doing or omissions of such an act. that, for the reasons explained in the foregoing paragraphs, the demand of duty itself is not sustainable. Therefore, no penalty under this subsection ought to be imposed on the noticees; that the conduct of the noticees were totally bonafide. The noticees neither had any intention to evade payment of duty, nor had any knowledge of the liability of the goods to confiscation. In the absence of any malafide on the part of the noticees, no penalty is imposable. In the case of *Hindustan Steel Ltd. v. State of Orissa* /1978 (2) *ELT (J159) (SC)*], Hon'ble Supreme Court held that

no penalty should be imposed for technical or venial breach of legal provisions or where the breach flows from the bonafide belief.

(viii) In any case Shri Nileshbhai Keshavlal Patel is not involved in day to day activities of company. There is no intention to evade duty, that penalty is not imposable on the Managing director of the company once the penalty is imposed upon the main company; that the Noticees are entitled for claiming exemption notification & that the demand of customs duty is not maintainable.

(ix) Since there is no liability to pay duty, no interest could be charged from the Noticees. The SCN has proceeded on the basis that the foreign supplier i.e. Cargill Australia does; not supply crude cotton seed oil thus the noticees has imported refined oil only; that above contention of the department is factually incorrect because the website of the Cargill Australia clearly show that Cargill Australia supplies crude and alkali refined vegetable oil. The SCN has also relied upon the various parameters of final products cleared from the factory premises of the noticees to content that i.e. refined cotton seeds oil cleared from the noticees's factory are of the range of imported cotton seeds oil; that the above contention of the department is factually incorrect because the samples of the imported oil was tested by the public analyst, food and drugs lab, Baroda vide test report 9.07.2009 wherein it was found that samples do not meet the PFA standards for the refined cottonseed oil.

#### **Defence reply by M/s. Narendra Forwarders Pvt. Ltd**

19. M/s. Narendra Forwarders Pvt. Ltd., filed reply dated 26.12.2013 stating, *inter alia*, that they had acted as Custom House Agents (CHA) for N. K. Proteins Limited in respect of goods imported by the importer vide Bill of Entry No.297681 dated 6-8-2010; that the said Bill of Entry was prepared and filed by them as CHA on behalf of the importer based on the import documents provided to them by the importer; that the importer provided to them the High Seas Sale agreement between the High Seas Seller (PEC Limited) and the importer and the Invoice raised by the foreign supplier on the said High Seas Seller in which the imported goods were described as "Cotton Seed Oil of Edible Grade in Bulk (Fit for human consumption after further processing) of Australian origin"; that they had prepared the Bill of Entry based on the description of the goods given in the said Invoice and in the Bill of Lading provided to them by the importer; that the classification of the said goods was claimed by the importer under Tariff Heading No.15122100 with the benefit of exemption under Serial No.33A of Notification No.21/2002 and the same were indicated in the Bill of Entry on the instruction of the importer; that in the course of such investigations, DRI recorded statement dated 27-11-2010 of their Power of Attorney Holder, Mr. Chetan Thakkar, wherein he deposed, *inter alia*,:

- (a) that Mr. N. K. Gajjar of the importer had contacted him for the clearance of the said goods,
- (b) that as per the import documents such as the Invoice and B/L supplied by the importer, the description of the goods was "Cotton Seed Oil of Edible Grade in Bulk (Fit for human consumption after further processing) of Australian origin",
- (c) that the importer had by letter dated 4th August 2010 given declaration and instructions for classification of the goods under Tariff Heading 1512 21 00 and that Bill of Entry was prepared as per the instructions of the importer,
- (d) that the role of CHA was to file the Bill of Entry based on the documents and instructions of the importer and that the CHA cannot know the actual physical parameters of the imported goods

which can be known only after the goods were subjected to test and

- (e) that they had at no time suggested or advised the importer to change the description in the import documents to “Crude Cotton Seed Oil for refining (Edible grade fit for human consumption after refining)”.

that it was clear from statement dated 27-11-2010 of their Power of Attorney Holder, Mr. Chetan Thakkar that **they had prepared and filed the Bill of Entry based on the description of the goods contained in the import documents such as Invoice and Bill of Lading provided to them by the importer and further that the classification of the goods was mentioned as per the instructions and declaration of the importer given to them by their letter dated 3<sup>rd</sup> July 2009**; that it was further clear from the said statement that they had no knowledge of the actual contents of the imported goods and that the description and classification in the Bill of Entry were indicated based on the import documents provided to them by the importer and in accordance with the instructions of the importer; that it was settled law that no penalty can be imposed on the CHA when the CHA had no knowledge of the actual contents of the imported goods and the CHA had merely filed the Bill of Entry based on the documents provided to the CHA by the Importer; that they place reliance in this behalf on the following judgments :

Prime Forwarders v Commissioner —2008 (222) ELT 137  
World Cargo Movers v CC - 2002 (139) ELT 408.

that when the e-mail dated 27-6-2009 which was supposed to have been sent by Mr. Nilesh K. Patel of the importer to the supplier, was shown to Mr. Nilesh K. Patel in the course of his statement dated 7-10-2010, he stated that he did not know how to use a computer for sending an e-mail and that while the said e-mail had been sent from his computer, he did not know who had sent the said e-mail; that Mr. Nilesh K. Patel had nowhere in his statement confirmed that they had ever advised him to get the description of the goods changed in any manner in the import documents; that Mr. Chetan Thakkar had in his statement dated 27-11-2010 categorically denied that he had ever suggested the importer to change the description in the import documents to “Crude Cotton Seed Oil for refining (Edible grade fit for human consumption after refining).”; that the said e-mail nowhere mentioned their name as the CHA who had given the alleged suggestion referred to in the e-mail; that the goods had been correctly described in the Bill of Entry and hence there was no misdeclaration of the goods; That the Public Analyst of Foods and Drugs Laboratory, Baroda had by his report dated 9<sup>th</sup> July 2009 opined that based on the tests conducted, the sample of Crude Cotton Seed **Oil** conformed to the standards and provisions laid down under the Prevention of the Food Adulteration Rules 1955, for Cotton Seed Oil and can be used only after proper cleaning and refining and conforming to the standards as laid down under item A-17.15 of Appendix B of PFA Rules 1955. Based on the said test report, the Port Health Officer, Kandla by his letter dated 10-7-2009 informed Customs that the goods conformed to the standards of Prevention of Food Adulteration Rules 1955 for Crude Cotton Seed Oil and further that the oil can be used only after proper cleaning and refining and conforming to the standards as laid down under item A-17.15 of Appendix B of PFA Rules 1955. It would be evident from the aforesaid test report of the Public Analyst and the letter of the Port Health Officer that the description of goods was correctly given in the Bill of Entry as Cotton seed oil of edible grade fit for human consumption after further processing ; that the Show cause notice has not produced any contrary test report to contradict and contest the test report of the Public Analyst that the goods can be used only after proper cleaning and refining and conforming to the standards as laid down under item A-17.15 of Appendix B of

PFA Rules 1955. Thus the description in the Bill of Entry that the goods were Cotton seed oil fit for human consumption after further processing was the correct description and it cannot be said that the goods had been misdeclared. The statements of Dr. S. Senthil Nathan, PHO, Kandla which have been relied upon in the Notice do not pertain to the goods imported in the present case vide Bill of Entry No.297681 dated 3-7-2009 and the tests reports referred to in the said statements also do not pertain to the goods imported in the present case; that it was clear from Paras A.17.02 and A. 17.15 of Appendix B of the Prevention of Food Adulteration Rules 1955 that Cotton Seed Oil which is imported into India and which conforms to the standards of Para A.17.02 can be supplied for human consumption only after it is subjected to refining as per the requirements of the said Para A. 17.15. Thus the description in the Bill of Entry that Goods were Fit for human consumption after further processing was a correct description and cannot be said to be a mis-declaration. Once it is clear that the goods have been correctly described in the Bill of entry, no penalty can be imposed for claiming a particular classification or benefit of exemption Notification. As laid down by the Supreme Court in the case of Northern Plastics Ltd Vs. CCE -1998 (101) ELT 549 (SC), claiming benefit of a particular exemption Notification by an importer is a matter of belief on the part of the importer and so long as the goods are correctly described in the Bill of Entry, the claiming of a particular exemption or classification cannot constitute misdeclaration. To the same effect are the following judgments 1. CC v Gaurav Enterprises -2006 (193) ELT 532 (2) Asian Rubber Works v CC -1999 (109) ELT 401. (3) Jay Kay Exports v CC -2003 (161) ELT 443.(4) Jay Kay Exports v CC -2004 (163) ELT 359; that as per the description of the goods given in the Bill of Entry itself and in view of the test report of the Public Analyst, Food & Drug Laboratory, the goods are correctly classifiable under CTH 1512 29 10 and not under CTH 1512 21 00. If that be so, no fault can be found with the importer or with us because all that it means is that the goods had been correctly described but that according to DRI the classification accepted by the proper officer of customs who released the goods after proper testing of the goods by the local health authority and confirming that the goods were Crude Cotton Seed Oil but to be used only after proper cleaning & refining, was incorrect. This only means that the DRI holds a different view on the classification than the one held by the proper officer of customs. This cannot be found ground for imposition of penalty on them. That they deny to have violated Regulation 13 of the Customs House Agents Licensing Regulations 2004 and that we are liable for action under Regulation 20 of the said Regulations. that we had filed the Bill of Entry based on the import documents received by the importer from the supplier and when the goods had been correctly described in the Bill of Entry, the mere fact that the DRI is entertaining a different view on classification than the one held by the proper officer of customs who assessed the Bill of Entry cannot make us liable to action as CHA under the said Regulations; that in the circumstances, the Show Cause Notice against them was totally unsustainable in law and was required to be discharged and dropped.

#### **PERSONAL HEARING:**

**20.** At the time of personal hearing on 04.03.2015, Shri Manish Jain, Advocate on behalf of M/s. N.K. Proteins Ltd appeared and reiterated the submissions made in their reply of the SCN. They have declared the product correctly in the Bill of Entry and hence larger period cannot be invoked. It is not a refined oil as the test report itself says it is in yellowish colour. As per the contract it is only cotton seed oil in crude form which has yellow colour and odour and the description also states that prime bleachable summer yellow cotton seed oil (NCPA Trade Rule 162). Even load port report confirms that it has colour and odour. Even the PHO test report confirms that it is only in crude form and requires further refining. Hence they are eligible for exemption from duty. The demand is clearly time barred as the Bill of Entry was finally assessed. As there is no allegation that M.D. Shri Nilesh was personally involved in mis-declaration

of the product, no penalty is imposable. There is no question of confiscation and imposition of fines and penalties in view of the above. He has requested another 10 days time to file additional reply which was considered. A further submission was received dtd. 14.03.2015 wherein they submitted they have facility to refine the oil from Crude oil and Crude Vegetable oil; that they undertook following process at its factory like 1. Neutralization 2. Work Instruction on Seperator 3. Bleaching 4. Deodorization 5. Packing.

**20.1** Shri J. C Patel, Advocate appeared for personal hearing on behalf of M/s. Narendra Forwarders Pvt. Ltd., on 03.03.2015 and reiterated the submissions made in their reply to SCN. He further stated that the Certificate issued by the PHO was not challenged and hence it is final; CHA has no role in declaring the products and as per the instructions given by the importer in writing they have filed the Bill of Entry; that he has filed a case law of Tribunal in the case of M/s. World Cargo Movers vs. CC, New Delhi, 2002(139) ELT 408(Tri-Del) and contended that B/E was filed as per the instructions of the importer and they have no role in declaration of the product in question; that he has also relied upon another Tribunal decision in the case of C. Natwarlal & Co. vs. CC(Imp), Mumbai dtd. 10.01.2013; that he has filed number of citations in his support regarding no penalty is imposable.

### **DISCUSSION AND FINDINGS:**

**21.** I have carefully gone through the case records and the submissions made by the Noticees. I find that the basic issue to be decided in this case is whether the, impugned goods declared as *cotton seed oil of edible grade in bulk (fit for human consumption after further refining of Australian origin)* and classified under CTH 15122100 in the Home Consumption Bill of Entry No. 297681 dated 03.07.2009, should not be rejected and goods be re-classified under the Customs Tariff Heading 15122910 as refined cotton seed oil of edible grade, denying the benefit of Serial No. 33A of Notification No. 21/2002- Cus dated 21/03/2002.

**22.** I find from the records that originally M/s N.K. Proteins had directly entered into a contract with M/s Cargill Australia Limited for purchase of 5000 Mt of Cotton Seed Oil. Based on the contract number S44852 dated 07/05/2010, M/s. N.K.Proteins Ltd. entered into the Novation Agreement dated 18.05.2009 with M/s. PEC Ltd., New Delhi and M/s Cargill Australia Limited. The said Novation Agreement clearly established that all the negotiations of quality, quantity and nature of goods were decided between M/s. N.K. Proteins Ltd., and M/s.Cargill Australia Ltd., vide Contract dated 14.05.2009. Thus, I find that though the goods were shown in the Bill of Entry to have been purchased on high sea sale from M/s PEC limited, but the same were actually purchased by placing the said direct order on M/s Cargill Australia Limited by M/s N. K. Proteins Limited.

**23.** **Further, I find from the e-mail of Shri Nilesh Patel Managing Director, of M/s. N. K. Proteins wherein he** had specifically instructed the overseas supplier to mention the word “**CRUDE**”, **TO MAKE AMENDMENT IN THE ANALYSIS REPORT**, and also **TO SAVE THEM FROM HUGE FINANCIAL BURDEN**, for which the overseas supplier replied “*please be advised that Cargill considers your request to alter documents as fraudulent and therefore will and cannot comply*”. From this e-mail and reply to this e-mail I find that Shri Nilesh Patel, though wanted to change the description of the goods and analysis report, the supplier apparently refused to change the same terming

it as fraudulent. However, in order to evade the payment of duty he had got changed the description of goods in the documents filed with the customs so as to facilitate them for mis-declaring the said cargo and the new words after refining were added to evade payment of appropriate customs duty.

**24. In view of the above facts which clearly show that he was aware that the oil supplied by M/s Cargill Australia Limited was not crude and he attempted to convince the said supplier to include the word "CRUDE" in the description of the goods.** Therefore, he was fully aware of the fact that the impugned oil was not 'Crude' but he had deliberately mis-classified them under CTH 15122100 (as Crude) with an intention to evade payment of duty.

25. As regards, the following test report in respect of the representative sample of the impugned goods on 10/07/2009 revealed as under :

*"..... Sample No. PHK/E/174/2009 conforms to the standards and provisions as laid down under the Prevention of Food Adulteration Rules, 1955, for crude Cotton Seed Oil."*

Further it was found that above mentioned report of PHO was based on the test report of Public Analyst, Food and Drugs Laboratory, Baroda. The Public Analyst, Baroda had given his report on the said sample forwarded to him by the PHO. The test report of Public Analyst was conveyed to the PHO vide report no. Q-3/150/2009 dated 09/07/2009. The relevant portion of the said test report No. Q-3/150/2009 dated 09/07/2009 is reproduced below:-

"Physical Appearance:- Yellowish coloured oily liquid giving of odour of cotton seed oil.

Label: - Loose sample

No.	Quality Characteristics	Name of method of test used	Result	Prescribed standards as per Item A.17.02 of Appendix 'B'
1	B.R. Reading At 40 <sup>0</sup> C	Refractometric method Ref:- ISI hand Book	57.3	55.6 to 60.2
2	Iodine Value	Wij" S method. Ref :- ISI Hand Book	111.6	98 to 112
3	Acid Value	Titrimetric Method Ref :- ISI Hand Book	0.2	-----
4	Test for til oil	Baudouin test. Ref :- ISI Hand Book	Negative	Negative
5	Test for cotton Oil	Halphen test method. Ref :- ISI Hand Book	Positive	Positive
6	Test for Mineral oil, Castor oil & Argemone oil	T.L.C. test. Ref :- ISI Hand Book	Negative	Negative
7	Bellier Test	Acetic acid method. Ref :- ISI Hand Book	21 <sup>0</sup> C	19 <sup>0</sup> C to 21 <sup>0</sup> C

Opinion: In respect of the tests performed above the sample of Crude Cotton Seed Oil (Imp.) **Conforms to the standards and provision laid down under the Prevention of The Food Adulteration Rules, 1955, for Cotton Seed Oil."**



26. As per the above test report, I find that the Acid Value and Iodine Value were within the parameters laid down in PFA Rules for Cotton Seed Oil. Therefore, I find that the said goods were not "Crude" as declared by the importer but were in fact "Refined Cotton Seed Oil of Edible Grade", appropriately classifiable under CTH 15122910.

27. I find that the importer M/s N.K Proteins Ltd. had filed a B/E claiming that they were importing "*Cotton Seed Oil of Edible Grade in Bulk (Fit For Human Consumption After Further Refining of Australian Origin)*" falling under Chapter subhead No. 15122100 of Customs Tariff Act, 1975 and claimed exemption from payment of customs duty under Sr. No.33A of Notification No.21/2002-Cus., dated 01.03.2002 as amended by Notification No. 42/2008-Cus. dated 01.04.2008 on the imported goods. The relevant Sr. No. 33A of notification is reproduced as under:-

(1) Sr. No.	(2) Chapter or Heading or sub - heading	(3) Description of goods	(4) Standard rate	(5) Additional duty rate	(6) Condition No.
"33A.	1508, 1509, 1510, 1512, 1513, 1514, or 1515	All goods, crude and edible grade	Nil	-	-

Thus, as per Sr. No. 33A of Notification No.21/2002-Cus., dated 01.03.2002 as amended by Notification No. 42/2008-Cus. Dated 01.04.2008, the exemption was available only to 'All goods, crude and edible grade' of Chapter heading No. 1508, 1509, 1510, 1512, 1513, 1514, or 1515. From the above, I understand that the exemption under the notification is available only to the crude oils of edible grade falling under Chapter heading No. 1508, 1509, 1510, 1512, 1513, 1514, or 1515.

28. As per the duty structure at the item of imports, various types of oils attracted the following duty rates :-

(a) edible grade and crude oils	Nil duty
(b) edible grade and refined oils	7.5%
(c) inedible grade and refined	100%

29. I refer to supplementary note 1 of chapter 15 of Customs Tariff Act, 1975 which states that :-

*"1. In this chapter, "edible grade" in respect of a goods (i.e. edible oil) specified in Appendix B to Prevention of Food Adulteration Rules, 1955, means the standard of quality specified for such goods in that Appendix"*

29.1 I therefore hold that the specifications of the cotton seed oil as given in the Appendix B to Prevention of Food Adulteration Rules, 1955 have to be referred while deciding whether the goods in question were of edible grade or not.

Entry A.17.02 of Appendix B to Prevention of Food Adulteration Rules, 1955 read as under:-

**A.17.02---COTTON SEED OIL** (Binola ka tel) means the oil extracted from clean, sound, delinted and decorticated cotton seeds (genus Gossypium). It shall be refined. It shall be clear, free from rancidity, suspended or other foreign matter, separated water, added colouring or flavouring substances, or mineral oils. It shall conform to the following standards:-

(a) Butyro refractometer reading at 40 degree C	55.6 to 60.2
or Refractive Index at 40 degree C	1.4630 – 1.4660
(b) Saponification value	190-198
<b>(c) Iodine value</b>	<b>98 to 112</b>
(d) Unsaponifiable matter	Not more than 1.5 %
(e) Acid value	Not more than 0.50
(f) There shall be no turbidity after keeping the filtered sample at	30 degree C for 24 hours.
<b>(g) Bellier test (Turbidity temperature Acetic acid test)</b>	<b>19 degree to 23 degree C</b>

Test for argemone oil shall be negative

29.2. The sample of subject goods was tested by the Public Analyst, Food and Drugs Laboratory, Baroda. Further, the samples of the subject goods were also tested by M/s. N. K. Proteins Ltd. for each tanker received by them at their factory premises. The values for various parameters of Refined Cotton Seed oil as per **IS:543-1968** and the values reported in the test report of Public Analyst and in the records of M/s. N.K. Proteins Ltd. is tabulated below :-

Sl. No.	Parameter	Value for Refined Cotton Seed Oil as per <b>IS:543-1968</b>		Value reported by Public Analyst, Baroda vide his test report dated 09/07/2009	Value mentioned in the records of M/s N.K Proteins Limited
		Type of Extraction of Oil			
		Expressed	Solvent-Extracted		
(i)	Moisture and insoluble impurities, present by weight, max	0.10	0.10	Not tested	0.10
(ii)	Refractive index at 40 degree Centigrade**	1.4630 to 1.4660 (common values for all grades)		57.3 *	1.4648/1.4649/1.4650/1.4651/1.4652 ( all values within the range of 4.4630 to 1.4660)
(iii)	Specific Gravity At 30 degree Centigrade	0.910 to 0.920 (common values for all grades)		Not tested	Not Monitored
(iv)	Saponification Value	190 to 198 (common values for all grades)		Not tested	Not Monitored
(v)	<b>Iodine Value (Wijs)</b>	<b>98 to 115</b> (common values for all grades)		111.6	> 112.70 to < 114

(vi)	Acid Value, Max.	0.30	0.30	<b>0.2</b>	< 0.1
(vii)	Unsaponifiable matter, % by weight, Max.	1.5	1.5	Not tested	Not monitored
(viii)	Flash point (degree Centigrade)	Not prescribed	Min 250	Not tested	Not monitored

[\*\* Corresponding parameter is Butyro- Refractometer Reading at 40 degree centigrade (i.e. B.R. Reading) and the corresponding value for the parameter in terms of B.R. Reading is 55.6 to 60.20.]

29.3. From the table above, I find that the IS specification No. 543-1968 which gives the specifications for Cotton Seed Oil of refined grade wherein it is specified that the acid value should be less than 0.3. The acid value of the impugned goods as tested at Baroda Laboratory was 0.2 and test recorded at the importers Laboratory was <0.1. In view of the above test reports I find that, the impugned goods meet the standard prescribed for refined cotton seed oil under **IS:543-1968**. Further, I find that the test report No. Q-3/150/2009 dated 09/07/2009, issued by the Public Analyst, Food & Drugs Laboratory, Vadodara, categorically reveals that the impugned goods conforms to the standards of quality prescribed for Cotton Seed Oil, under item A-17.02 of the PFA Rules, 1955. The above discussed test reports and evidences clearly reveal that the subject imported goods were not 'Crude' in nature and it also emerges that the subject imported goods cannot be classified as goods covered under CTH 15122100 as 'Crude Oil of Edible Grade' but the same are correctly classifiable under CTH **15122910**, as 'Refined Cotton Seed Oil of Edible Grade'.

29.4 Thus, it is crystal clear that the oil imported by importer was not the Crude Cotton Seed Oil as the values reported in the test report were for Cotton Seed Oil of refined quality. The importer M/s. N. K. Proteins Limited had deliberately misclassified the goods under CTH 15122100 (i.e. for Crude Cotton Seed Oil) with an intention to evade the payment of duty on the imported consignment.

30. I also find that Shri Nileshbhai Keshavla Patel, Managing Director of the importer company had admitted that as per his factory Pre-unloading reports Nos. 17,13,11,19, 10 all dated 25/09/2009 and 11 dated 24/09/2009 the goods were Refined Cotton Seed Oil and accordingly, he voluntarily paid customs duty of Rs. 1,17,40,112/- vide Challan / Pay order No. 085978 dated 11.10.2010 during investigation proceedings by considering the same as refined cotton seed oil. Accordingly, I hold that the impugned oil was not in crude form at the time of its import and therefore, it cannot get the benefit of exemption from payment of customs duty under Sr. No. 33A of Notification No.21/2002-Cus., dated 01.03.2002 as amended.

31. From the above discussion, I find that the impugned oil is not Crude Cotton Seed Oil and hence, the same is not classifiable under CTH No. 15122100 and being the refined cotton seed oil of edible grade, the same is rightly classifiable under CTH 15122910 and accordingly, is not eligible for exemption from payment of customs duty under Sr. No.33A of Notification

No.21/2002-Cus., dated 01.03.2002 as amended by Notification No. 42/2008-Cus. dated 01.04.2008.

32. In view of the above, I am of the considered opinion that the impugned goods are rightly classifiable under CTH 1512 2910 of Customs Tariff Act, 1975 being **refined cotton seed oil of edible grade** instead of CTH 15122100 which corresponds to **crude cotton seed oil of edible grade** and accordingly, the same is leviable to customs duty @7.5% adv. The benefit of the notification No. 21/2002-Cus. ( S.No. 33A) shall not be available.

33. The importer has not challenged any of the test reports nor sought re-test of the samples. Facts of the case indicate that the importer mis-declared the description of the goods in the Bill of Entry with an intent to evade payment of customs duty. **This is evident from the fact that in respect of the impugned goods, the importer had managed to get the import documents amended to show the description in such a way as to indicate that the product is Crude in nature.**

34. In this case, as already discussed and decided by me, the impugned goods imported by the said noticee, is Cotton Seed Oil of Edible grade, rightly classifiable under Chapter Sub-heading 15122910 of the Schedule to Customs Tariff Act, 1975. However, for the purpose of claiming exemption, the said noticee has declared the same as Cotton Seed Oil and classified it under Chapter Sub-heading 15122100 ibid. Since the noticee had wrongly claimed and availed the benefit of exemption under Sr. No. 33A of Notification No.21/2002-Cus, which in turn led to less payment of differential duty to the tune of Rs.1,74,00,111/- on the 'Cotton Seed Oil of Edible grade by considering the same as 'Crude Cotton Seed Oil of Edible Grade, they have violated the provisions of Section 46 (4) of the Customs Act, 1962. Accordingly, the said imported goods are liable for confiscation, under Section 111(m) of the Customs Act, 1962. This contravention and or violation falls within the purview of the nature of offence prescribed under Section 111(m) of the Customs Act, 1962. Thus, the goods are liable for confiscation under Section 111(m) of the Customs Act, 1962.

34.1. I also find that the noticee has also contravened the provisions of Section 11 of the Foreign Trade (Development and Regulation) Act, 1992 (as detailed in the Show Cause Notice) and for this, the goods are liable for confiscation under Section 111(d) of the Customs Act, 1962. I also find no substance in the contention of the noticee that there is no mis-declaration of the, on their part. In my view, mis-declaration has been defined in a plethora of decisions, which means representing something or declaring something which is not true with or without intention to evade payment of duty. Further, it is a settled law that mis-declaration means not declaring something or making an incorrect declaration about something, which he is required to declare under the law. This definition has a direct connection in this case.

34.2. Therefore, I hold that 5069.51 MTS of Cotton Seed Oil totally valued at Rs.22,52,44,167/- imported by the said noticee vide Bill of Entry No.297681 dtd. 03.07.2009 are liable for confiscation under Section 111(m) and

Section 111(d) of the Customs Act, 1962. I find that the said Bill of entry, has been finally assessed at the relevant time, and the impugned goods have been cleared. As such, since the Bill of Entry has been assessed finally and the impugned goods have been cleared and are not available for confiscation, I refrain from imposing redemption fine in lieu of confiscation in respect of the said Bill of entry.

### **WHETHER EXTENDED PERIOD INVOKABLE**

35. It is contended by the Importer that the Bill of Entry was finally assessed on 3.07.2009, however, the SCN was issued on 27.05.2013 therefore, the demand was beyond period of limitation. Proposal to invoke extended period of limitation is not sustainable as the noticee has correctly provide declaration in the bill of entry. The declaration was found to be correct even after testing of imported goods.

35.1 In this regard, I find that the test report No. Q-3/150/2009 dated 09/07/2009, issued by the Public Analyst, Food & Drugs Laboratory, Vadodara, categorically revealed that the impugned goods conforms to the standards of quality prescribed for Cotton Seed Oil, under item A-17.02 of the PFA Rules, 1955. The above discussed test reports and evidences clearly reveal that the subject imported goods were not 'Crude' in nature and it also emerges that the subject imported goods cannot be classified as goods covered under CTH 15122100 as 'Crude Oil of Edible Grade' but the same are correctly classifiable under CTH **15122910**, as 'Refined Cotton Seed Oil of Edible Grade'. I further find that e-mail recovered from their office clearly shows that M/s. N. K. Proteins were fully aware that the impugned goods supplied by M/s Cargill Australia Limited were not 'Crude'. The e-mail clearly shows that despite knowing actual description of the impugned goods, they attempted to convince the supplier to incorporate the word "CRUDE" in the description of the goods. This fact shows malafide intention on the part of M/s. N. K. Proteins. Thus, it is evident that M/s. N. K. Proteins were fully aware of the fact that the subject imported goods were not 'Crude' but deliberately mis-declared its description and mis-classified the same under CTH 15122100 (as Crude) in Bill of Entry No. 297681 dated 03.07.2009 with an intention to evade payment of duty amounting to Rs.1,74,00,111/- by wrongly claiming benefit of Sl. No. 33A of Notification No. 21/2002-Cus dated 1.03.2002. This deliberate act of clearing the impugned goods evading customs duty amounting to Rs.1,74,00,111/- by way of mis-declaration in Bill of Entry No. 297681 dated 03.07.2009 clearly amounts to collusion and suppression of facts on the part of M/s. N. K. Proteins Ltd.

35.2 In view of above facts and circumstances, I find that the provision enumerated in Section 28(4) of the Customs Act, 1962 for invoking extended period of demand is rightly attracted. Therefore, the customs duty amounting to Rs. 1,74,00,111/- is liable to be demanded from M/s. N. K. Proteins Ltd. under Section 28(4) of the Customs Act, 1962 along with interest under Section 28AA *ibid*.

35.3 In nutshell, the Importer M/s. N. K. Proteins Ltd, Shri Nilesh Patel, Managing Director of M/s. N. K. Proteins Ltd and M/s. Narendra Forwarders, CHA were aware of the above facts and as such efforts were made by them to

prepare the documents accordingly to be presented to Customs so as to conceal the real facts.

35.4 In view of the discussions para supra, I am of the considered view that the show cause notice has been correctly issued invoking the extended period of limitation. Further, I find that M/s.N. K. Protein Ltd. have made themselves liable to penalty under Section 112(a) as well as under Section 114A of the Customs Act, 1962. However, since I propose to impose penalty under Section 114A of the Customs Act, 1962, I do not impose any penalty on them under Section 112(a) of the Customs Act, 1962 as provided in proviso to Section 114A.

#### **ROLE OF SHRI NILESH K PATEL, MANAGING DIRECTOR**

36. As regards the proposal for imposition of penalty on Shri Nilesh K. Patel, Managing Director of the importer company, I note that his role was decision making for activity of importer company and he stated in his statement dated 07/10/2010 that he had ordered for Crude Cotton Seed Oil only. I further note that all the test reports revealed that the impugned imported oil was not 'Crude' in nature. As admitted by himself in his said statement, he was the only decision making person in M/s. N. K. Proteins Ltd. I find that it was not possible that he was not aware of actual description of imported goods. Thus, it is clear that he had ordered for importation of impugned imported oil, although shown to have been purchased on high sea sale from M/s PEC limited, the documents and e-mails recovered from importer showed that the order was directly placed on M/s Cargill Australia Limited by Shri Nilesh Patel himself. An e-mail recovered from his office clearly showed that he was aware that the oil supplied by M/s Cargill Australia Limited was not crude and he attempted to convince the said supplier to include the word "CRUDE" in the description of the goods. Therefore, he was fully aware of the fact that the impugned oil was not 'Crude' but he had deliberately mis-classified them under CTH 15122100 (as Crude) with an intention to evade payment of duty. It was clear that the importer had imported cotton seed oil which was not conforming to the standards laid down under item A.17.02 and A.17.15 of PFA Rules, 1955. The said acts of omissions and commissions, on his part rendered the subject 5069.51 MT of Cotton Seed Oil having declared assessable value of Rs. 22,52,44,167/- liable to confiscation under Section 111 (d) and (m) of the Customs Act, 1962 and therefore, I hold that the penalty under Section 112(a) of the Customs Act, 1962 is rightly proposed under the SCN against him. Accordingly, I am inclined to impose a penalty on Shri Nilesh K. Patel, Managing Director of M/s N. K. Proteins Ltd. under section 112(a) of the Customs Act, 1962.

#### **ROLE OF M/S. NARENDRA FORWARDERS, CUSTOM HOUSE AGENT**

37. As regards the proposal for imposition of penalty on M/s Narendra Forwarders Pvt. Ltd. ,CHA under section 112(a) of the Customs Act, 1962, I note that in the SCN it is alleged that one of the e-mails sent by the importer to the supplier, M/s. Cargill Australia Ltd., indicated that customs clearing agent advised the importer to change description of the cargo as *crude cotton seed oil for refining (edible grade fit for human consumption after refining)*. I further note that despite having specifically asked by the DRI to Shri Nilesh K. Patel, Managing Director of the importer company while recording his statement that who had

advised them for sending email to the supplier M/s Cargil for changing the description of the impugned oil, in response thereto, Shri Nilesh K. Patel has chosen to state that he was not aware of it. Thus, Shri Nilesh K. Patel has not given clean chit to CHA company whereas in the email it was clearly mentioned that the customs clearing agent has advised them to do so. Shri Chetan Thakkar, Power of Attorney holder of CHA company in his statement recorded by the DRI has denied of having advised the importer to get the description changed of the impugned oil from the foreign supplier. These, all indicate that the CHA company was somewhere involved in mis-declaration of the impugned oil. I am, therefore, satisfied that M/s Narendra Forwarders Pvt. Ltd., CHA, aided and abetted the importer in getting impugned goods mis-declared/mis-classified in the import documents as 'Crude' to facilitate the importer to evade payment of customs duty. Thus, the CHA failed to discharge their obligations under the Custom House Agents Licensing Regulations, 2004(now Customs Broker Licencing Regulation, 2013). The said acts of omissions and commissions on the part of the CHA rendered the goods liable to confiscation under section 111(d) and (m) of the Customs Act, 1962 and accordingly, I hold that penalty is imposable on M/s Narendra Forwarders Pvt. Ltd., CHA under section 112(a) of the Customs Act, 1962.

38. In view thereof, I pass the following order:

#### ORDER

- (i) Classification of 5069.51 MT of Cotton Seed Oil in question, having assessable value as Rs. 22,52,44,167/-, declared as *cotton seed oil of edible grade in bulk (fit for human consumption after further refining of Australian origin)* and classified under CTH 15122100 in the Home Consumption Bill of Entry No. 297681 dated 03.07.2009, by M/s. N.K. Proteins Limited having their office situated at 7<sup>th</sup> Floor, Popular House, Ashram Road, Ahmedabad is hereby rejected and goods be re-classified under the Customs Tariff Heading 15122910 as refined cotton seed oil of edible grade and the said Bill of Entry be assessed. I also, deny the benefit of Serial No. 33A of Notification No. 21/2002- Cus dated 21/03/2002.
- (ii) I confiscate the 5069.51 MT of Cotton Seed Oil in question, having declared assessable value of Rs. 22,52,44,167/-, cleared under Home Consumption Bill of Entry No. 297681 dated 03.07.2009 under Section 111(d) and 111 (m) of the Customs Act, 1962, read with Foreign Trade (Development and Regulation) Act, 1992 and Foreign Trade (Regulation) Rules, 1993. However, the bill of entry have been assessed finally and the impugned goods are not available for confiscation, I refrain from imposing any redemption fine on M/s. N.K. Proteins Limited in lieu of confiscation.
- (iii) I confirm the Customs duty amounting to **Rs.** 1,74,00,111/- on the 5069.51 MT of Cotton Seed Oil covered under Bill of Entry No.297681 dated 03.07.2009, on M/s. N.K. Proteins Limited under Section 28 (4) of the Customs Act, 1962 along with applicable interest under Section 28 AA of the Customs Act, 1962 (erstwhile Section 28 AB of Customs Act, 1962).

- (iv) I appropriate an amount of Rs. 1,74,00,111/- already paid by M/s. N.K. Proteins Limited and order adjustment of the same against their duty liability mentioned at (iii) above.
- (v) I impose a penalty on M/s. N.K. Proteins Limited having their office situated at 7<sup>th</sup> Floor, Popular House, Ashram Road, Ahmedabad of **Rs. 1,74,00,111/- (Rupees One Crore Seventy Four Lakh One Hundred Eleven only)** under Section 114A of the Customs Act, 1962 for the acts of commission and omission as discussed above.
- (vi) I impose a penalty of **Rs. 20,00,000/- (Rupees Twenty Lakh only)** on Shri Nileshbhai Keshavlal Patel, Managing Director of M/s. N.K. Proteins Ltd., Ahmedabad under section 112(a) of the Customs Act, 1962.
- (vi) I impose a penalty of **Rs. 2,00,000/- (Rupees Two Lakh only)** on M/s Narendra Forwarders Pvt. Ltd., CHA company under section 112(a) of the Customs Act, 1962.
- (vii) I order to initiate action on M/s Narendra Forwarders Pvt. Ltd., CHA under Regulation 20 of the Customs House Agents Licensing Regulations, 2004 (Now Customs Broker Licensing Regulations 2013) for the reasons given in the foregoing para.

(P V R REDDY)  
COMMISSIONER

**By REGD. POST A.D/Hand Delivery**

F.No.S/10-40/Adj/2013-14

Date

.03.2015

To,

1. M/s. N.K. Proteins Ltd.,  
7<sup>th</sup> Floor, Popular House, Ashram Road,  
Ahmedabad 380 009.
2. Shri Nileshbhai Keshavlal Patel,  
Managing Director,  
M/s. N.K. Proteins Ltd.,  
7<sup>th</sup> Floor, Popular House, Ashram Road,  
Ahmedabad 380 009.
3. M/s. Narendra Forwarders Pvt. Ltd.,CHA  
Plot No.16, Sector-8,  
Gandhidham (K) 370 201.

**Copy to:**

- 1) The Chief Commissioner of Customs, Gujarat Zone, Ahmedabad, with copy of Show Cause Notice
- 2) The Additional Director General, Directorate of Revenue Intelligence, AZU, Ahmedabad for information pl.
- 3) The Assistant Commissioner (Group-I), Custom House, Kandla
- 4) The Assistant Commissioner (Recovery), Custom House, Kandla.
- 5) The Assistant Commissioner (CHA), Custom House, Kandla
- 6) Guard File.



**OFFICE OF THE COMMISSIONER OF  
CUSTOMS, KACHCHH,  
CUSTOM HOUSE, NEAR BALAJI TEMPLE,  
KANDLA 370 210**

Phone: 02836-271 468 Fax: 02836-271 467

**C O R R I G E N D U M**

**SUBJECT : Corrigendum to Order-In-Original No. KDL/COMMR/23/2014-15 dated 30.03.2015, issued on 31.03.2015, passed by the Commissioner of Customs, Kandla in case of M/s. N. K. Proteins Pvt. Ltd : m/r.**

On page 30 of para 36 of the above Order-In-Original dated 31.03.2015, issued on 31.03.2015, in line no. 19, the word "**not**" stands deleted.

(P V R REDDY)  
COMMISSIONER

**By REGD. POST A.D/Hand Delivery**

F.No.S/10-40/Adj/2013-14

Date .06.2015

To,

1. M/s. N.K. Proteins Ltd.,  
7<sup>th</sup> Floor, Popular House, Ashram Road,  
Ahmedabad 380 009.
2. Shri Nileshbhai Keshavlal Patel,  
Managing Director,  
M/s. N.K. Proteins Ltd.,  
7<sup>th</sup> Floor, Popular House, Ashram Road,  
Ahmedabad 380 009.
3. M/s. Narendra Forwarders Pvt. Ltd.,CHA  
Plot No.16, Sector-8,  
Gandhidham (K) 370 201.

**Copy to:**

- 3) The Chief Commissioner of Customs, Gujarat Zone, Ahmedabad,
- 4) The Additional Director General, Directorate of Revenue Intelligence,  
AZU, Ahmedabad for information pl.
- 3) The Assistant Commissioner (Group-I), Custom House, Kandla
- 5) The Assistant Commissioner (CHA), Custom House, Kandla
- 6) Guard File.