

## CHAPTER V CLASSIFICATION

A few cases of incorrect classification of goods resulting in short-levy/non-levy of customs duties of Rs. 7.05 crore noticed in test check are discussed in the following paragraphs. These observations were communicated to the Ministry through 24 draft audit paragraphs. The Ministry/department has accepted (till January 2010), the audit observations in 15 draft audit paragraphs with a revenue implication of Rs. 2.06 crore, of which Rs. 37 lakh has been recovered.

### 5.1 Woven fabrics

‘Woven fabrics of synthetic staple fibres, containing 85 per cent or more by weight of synthetic staple fibres-unbleached’ are classifiable under Custom Tariff Heading (CTH) 55121110, attracting duty at the rate of 10 per cent ad valorem, whereas ‘Woven fabrics of synthetic filament yarn – other woven fabrics, containing 85 per cent or more by weight of polyester filaments – other’ merited classification under heading 54076900 with applicable rate of duty at 10 per cent ad valorem or Rs. 60 per sq. meter, whichever is higher.

M/s Foreign Trade Agency and nine others imported, between February 2007 and December 2008, through Srimantapur and Agartala land customs stations under the Commissionerate of Customs (Preventive), North Eastern Region, Shillong, fifteen consignments of woven fabrics and declared these as made out of polyester/synthetic staple fibre. Accordingly, the department classified these goods under CTH 551211 and assessed to basic customs duty at 10 per cent ad valorem. However, chemical test reports revealed that the fabrics were made out of synthetic filament yarn and not staple fibre as was declared by the importers. The imported fabrics, therefore, merited classification under CTH 540769. The incorrect classification of these goods resulted in short levy of duty of Rs. 2.41 crore.

On this being pointed out (February 2009), the department stated (March and July 2009) that more reliance was placed on external factors like packing, labelling, merchandising including known use of the goods in the local market. It further added that the goods were un-dyed material containing 85 per cent or more artificial filament yarn and, therefore, correctly classifiable under CTH 540821, instead of the initial classification under CTH 551211 and that the change in classification would not result in levy of differential duty since the duty rate under the two tariff headings were the same. The department further stated that the chemical test reports related only to Azo-dye Test<sup>1</sup> and not for the purpose of classification.

The reply of the department is not tenable because the test reports for Azo-dye test and determination of composition of samples obtained from the Textile testing laboratory indicated that the goods were woven fabrics made up of polyester/synthetic filament yarn only, and not of artificial filament yarn as described in the pasted label, which was relied on by the department for re-

---

<sup>1</sup> Azo-dye is a forbidden dye which had not been allowed to be used in textiles and garments

classification under CTH 540821. It was also made clear that the goods were not staple fibre as declared by the importers in the import documents. Hence, the imported fabrics are classifiable under CTH 540769 only.

Reply of the Ministry has not been received (January 2010).

## **5.2 Mobile phones in CKD condition**

As per the first schedule to Customs Tariff Act 1975, read with Rule 2 (a) of General Rules for the interpretation of the schedule, all parts/components of Cellular phones imported in single consignment are classifiable under CTH 85171210 treating them as ‘complete mobile handset’ and are leviable to additional duty of customs to countervail the sales Tax/VAT at the rate of four per cent and National Calamity and Contingent Duty (NCCD) at the rate of one per cent. This position has been reiterated in Board’s Circular no. 1/2005 dated 11 January 2005. Customs notification no. 21/2005 dated 1 March 2005 exempts parts of mobile hand sets from the levy of basic customs duty (BCD) and additional duty of customs, if the importer follows the procedure under the Customs (Import of goods at concessional rate of duty for the manufacture of excisable goods) Rules, 1996.

M/s ICOMM Tele Ltd. imported (April and May 2008) 19 consignments of ‘All parts of IFWT phone model ACP 1507 (operating on cellular technology)’ such as front case assembly, back case assembly, main PCB assembly and hand set assembly for a total value of Rs. 22.45 crore. These goods were classified under CTH 85177090 as ‘other parts of phone’ and assessed to duty at ‘nil’ rate under the Customs notification no. 21/2005 dated 1 March 2005. Audit scrutiny, however, revealed that the imported goods were cell phones in completely knocked down (CKD) condition and classifiable under CTH 85171210 as ‘telephone for cellular networks or for other wireless networks’ and assessable to additional duty of customs and NCCD at the rate of one per cent ad valorem. This mis-classification resulted in short levy of duty of Rs. 1.14 crore.

On this being pointed out (September and October 2008), the department stated (March 2009) that these parts were imported in two or more consignments and required manufacturing operation such as assembly, soldering and testing to use as telephone and therefore Rule 2 (a) of Interpretation of schedule could not be applied.

The reply is not tenable due to the following reasons:

- All the parts such as front case assembly, back case assembly, main PCB assembly, hand set assembly and antenna were imported in sets so as to assemble the required number of telephones.
- The Board after considering that the “telephones” were being imported in disassembled conditions as “parts” had directed the department to classify them as ‘complete mobile hand set’ under CTH 85252017.

- Also several operations such as assembly, soldering and testing which were stated to be carried out, before the goods would be used as a telephone, are nothing but simple assembly operations.

### **5.3 Video games of a kind used with television receiver**

“Video games of a kind used with television receiver” are classifiable under CTH 9504 and attract countervailing duty. However, recorded audio/video CD/DVD classifiable under CTH 8524 is exempted from countervailing duty (Central Excise notification 6/2006 dated 1 March 2006). It was judicially held in the case of M/s Hi-Tech Computers Vs Commissionerate of Customs {2004 (174) ELT 222 (Tribunal-Bangalore)} that video games are classifiable under CTH 9504.

M/s Redington (India) Ltd. Chennai imported (August 2006/March/October 2008) 27 consignments of “video games DVD/DVD/CD for X Box 360” through Chennai (Sea) commissionerate. The department classified one consignment imported in August 2006 under CTH 8524 and assessed duty on these goods on merit. The importer paid (August 2006) duty of Rs. 77.63 lakh, but subsequently applied for exemption under CE notification no. 6/2006. The Commissioner (Appeals) in an ex-parte order (July 2007) directed re-assessment of the bill of entry allowing exemption under Central Excise notification no. 6/2006 (serial no. 22) dated 1 March 2006. The importer was refunded duty of Rs. 46.28 lakh after re-assessment of the BE. The subsequent imports (26 consignments) were classified by the department under CTH 85234090 “Other video CD” and exempted these consignments from countervailing duty under the aforesaid Central Excise notification.

Despite the judicial pronouncement of 2004 classifying the imported goods under CTH 9504, the department erred twice, first in mis-classifying these under CTH 8524 and later on not representing the department appropriately before the Commissioner (Appeals). These actions of the department led to incorrect refund of Rs. 46.28 lakh (one consignment) and short levy of Rs. 27.64 lakh (26 consignments).

On the above being pointed out (February 2008 to April 2009), the department justified the refund and classification in subsequent imports stating that the Commissioner (Appeals) had held these goods as eligible for exemption by classifying them under CTH 8524.

The reply of the department is not tenable because the classification of these goods under CTH 9504 was judicially held as early as in 2004, while the appeal case was decided ex-parte without considering the earlier decision of the Bangalore Tribunal.

The matter was reported (October 2009) to the Ministry; its response has not been received (January 2010).

### **5.4 Lauryl alcohol/stearic acid**

As per CTH 3823, industrial mono carboxylic fatty acid, acid oils from refining and industrial fatty alcohols such as oleic acid/stearic acid/lauryl

alcohol etc. are classifiable under heading 3823 and leviable to concessional rate of customs duty vide notification no. 21/2002-cus dated 1 March 2002, as amended. As per 'Harmonised system of nomenclature (HSN)' explanatory note below chapter heading 38, oleic acid of purity of 85 per cent or more is classifiable under CTH 2916 and other fatty acids of purity of 90 per cent or more are classifiable under 2915, 2916 or 2918 and leviable to concessional BCD at the rate of seven-and-a-half per cent ad valorem under the aforesaid notification (serial no. 553).

M/s Hindustan Unilever Ltd. and 26 others, imported 49 consignments of lauryl alcohol {(fatty alcohol)/oleic acid/stearic acid (other fatty acids)} through JNCH commissionerate, Mumbai between November 2007 and February 2009. Audit scrutiny revealed that the goods were classified under CTH 2905/2915 and assessed to the concessional rate of BCD without drawing and analysing test samples to determine the purity of the imported goods as the concentration of these should be 90 per cent or more to merit classification under CTH 2915 and accordingly be eligible for lower rate of BCD. In the absence of test reports, these were classifiable under CTH 3823 and chargeable BCD at the rate of 15 per cent instead of the seven-and-a-half per cent levied. This resulted in short levy of duty of Rs. 54.03 lakh.

On this being pointed out (June 2008 to September 2009), the department reported (August to December 2008) recovery of Rs. 21.62 lakh in respect of four consignments. Reply in respect of the remaining consignments has not been received (January 2010).

The matter was reported to the Ministry between August and October 2009; its response has not been received (January 2010).

## **5.5 Perfumery products**

In terms of note 1(a) to chapter 44 of the Customs Tariff Act (CTA), 1975, wood in chips, shavings, crushed, ground or powdered form, of a kind used primarily in perfumery, inter-alia, is excluded from the purview of chapter 44 of the CTA, 1975 and is classifiable under the tariff heading of the said Tariff Act.

M/s Jaya Perfumery Works, Kolkata and 28 others imported 146 consignments of 'Joss powder' (bark of litsea tree in powdered form) between February 2007 and March 2008 through Kolkata (Port) and Chennai (Sea) commissionerate. The department classified these goods as 'agarbatti (perfumery product) and other odoriferous preparation,' sawdust, wood waste and scrap under CTH 3307/4401. However, the imported goods being raw material for making 'agarbatti' were correctly classifiable under CTH 1211, as per the aforesaid chapter note. The incorrect classification resulted in short levy of duty of Rs. 51.39 lakh.

On this being pointed (October 2007/March 2008/May 2009), the Chennai commissionerate issued (May/June 2009) demand notices for 108 consignments. However, the Kolkata commissionerate justified (April 2009) the classification under CTH 4401 stating that 'Joss powder' did not have a perfume of its own and, therefore, it could not be used primarily or directly in perfumery and it acted as a binding agent for making incense sticks

(Agarbatti). The contention of the department is not tenable in view of the fact that joss powder though not fragrant by itself, was used in the process of producing perfumed stick and hence classifiable under CTH 1211.

The matter was reported to the Ministry in October 2009; its response has not been received (January 2010).

## **5.6 Singlets and other vests**

‘Singlets and other vests’ are classifiable under CTH 610990 and leviable to BCD at the rate of 10 per cent or Rs. 50 per piece, whichever is higher. As per section 19(b) of the Customs Act, 1962, goods consisting of a set of articles which are liable to duty with reference to value, are chargeable to duty at the highest of such rates, if they are liable to duty at different rates.

A consignment of different sets of articles namely ‘Short pant – synthetic’ and ‘Singlets and Vests’, imported in April 2008 by M/s Saha International through Land Customs Station, Changrabandha under the Commissionerate of Customs (Preventive), West Bengal, were classified under CTH 62046300 and 61079190 respectively and assessed to duty at the rate applicable to ‘Vests of cotton’ though the consignment contained ‘singlets (classifiable under CTH 6109)’ which attracted a higher rate of duty. This resulted in short levy of duty of Rs. 22.15 lakh.

On this being pointed out (November 2008), the department reported (March 2009) that show cause notice was being issued to safeguard revenue. Further progress has not been intimated (January 2010).

The reply of the Ministry has not been received (January 2010).

## **5.7 Plasma Television sets**

“Plasma Television sets” are classifiable under CTH 85287390 and assessable to BCD and CVD.

M/s Panasonic Sales and Services India imported (July 2008 to November 2008), 60 “Panasonic brand 65 inch Plasma monitor” (Model TH-65PF10WK)” valued at Rs. 1.16 crore, through Chennai (Sea) commissionerate. The department classified the goods under the CTH 85285100 as “other monitors used in automatic data processing system under CTH 8471” and exempted these from levy of BCD under serial no. 17 of the Customs notification no. 24/2005 dated 1 March 2005.

Audit scrutiny, however, revealed that the imported item “Panasonic brand 65 inch” Plasma monitor (Model TH-65PF10WK) was actually a Plasma television set and not a monitor to be used with the automatic data processing system. Accordingly, the imported goods were classifiable under CTH 85287390 and assessable to BCD at 10 percent. The incorrect classification resulted in incorrect grant of exemption of BCD Rs. 20.44 lakh.

On the matter being pointed out (December 2008), the department reported (April 2009) that the imported goods were not television sets but monitors. The reply of the department is not factual as the product code “Panasonic Model TH-65PF10WK” is also described/advertised as a plasma TV at the

website of the company. Further, the department did not furnish any catalogue or technical write-up to substantiate its claim that the goods in question were monitors.

The matter was reported (October 2009) to the Ministry; its response has not been received (January 2010).

### **5.8 Air conditioners duct type**

Window or Wall type air conditioners, “self contained” or “split system” are classified under CTH 841510 and assessable to BCD and CVD. As per the HSN explanatory notes to sub-heading 841510, central air conditioning systems which utilise ducts to carry refrigerated air from an evaporator to several areas to be cooled are excluded from this subhead. Further, as per serial no. 49 of the table annexed to the Customs notification no. 85/2004 dated 31 August 2004, all goods of Thailand origin, falling under CTH 841510 are exempt from the levy of BCD.

M/s ETA General Pvt. Ltd. imported (June 2007 to August 2008) “Duct type air conditioners” of Thailand origin, valued at Rs. 1.46 crore, in 13 consignments through Chennai (Sea) commissionerate. These goods were classified under CTH 84151090 as “Other air conditioners” and assessed to ‘nil’ rate of BCD under the aforesaid notification. However, as per the aforesaid HSN note “Duct type air conditioners” were not covered under CTH 841510. The mis-classification and incorrect grant of exemption resulted in short levy of duty of Rs. 17.49 lakh.

On the matter being pointed out (May, August and October 2008), the department admitted (July 2009) that as per the HSN explanatory notes the benefit of notification no. 85/2004 could not be extended to the duct type air conditioners. The department further added that the importer during public hearing held on 30 June 2009 reiterated that the duct air conditioners were also split air conditioners. The importers contention was under examination. Further progress has not been intimated (January 2010).

The matter was reported (October 2009) to the Ministry; its response has not been received (January 2010).

### **5.9 Limestone powder**

As per customs notification 21/2002 dated 1 March 2002 serial no. 552, “Limestone Powder Honcal 1T, 2T, 7T” (Calcium carbonates) are classifiable under the CTH 28365000 and leviable to a concessional rate of BCD and CVD.

“Limestone used for manufacture of cement or lime” are classifiable under CTH 25210090 and assessable to BCD at 5 per cent under serial no. 517 of the above customs notification and CVD at ‘nil’ rate.

M/s Micro Carbonates Pvt. Ltd. and seven others imported (February to September 2008), 31 consignments of ‘Limestone Powder Honcal 1T, 2T, 7T (Calcium carbonates)’ valued at Rs. 84.85 lakh through Chennai (Sea) commissionerate. The department classified these goods under CTH

25210090 as ‘other limestone used for manufacture of cement or lime’ and assessed to BCD at concessional rate and exempted CVD extending the benefit under serial no. 517 of the above customs notification. Audit scrutiny, however, revealed that the department assessed similar imports from the same importer under CTH 28365000 (BE 738948 dated 13 May 2008 and BE No. 744105 dated 19 May 2008). Accordingly, the mis-classification resulted in short levy of duty Rs. 16.32 lakh.

On this being pointed out (August/November 2008), the department while prima facie accepting the observation in respect of 19 consignments stated (December 2008) that no samples were drawn since no examination was prescribed for these bills. However, the department issued protective demand notices to the importers. The replies in respect of the remaining 12 consignments have not been received (January 2010).

The matter was reported (September 2009) to the Ministry; its response has not been received (January 2010).

### **5.10 Helium leak testing machine-twin chamber**

Instruments and apparatus for measuring or checking the flow level, pressure or other variables of liquids or gases (eg. flow meters, level gauges, manometer, heat meters etc.) are classifiable under CTH 9026 and are exempted from BCD under customs notification no. 24/05 dated 1 March 2005. Other measuring or checking instruments, appliances and machines not specified elsewhere in the chapter are classifiable under CTH 9031 and are chargeable to BCD at the rate of seven-and-a-half per cent.

Two “Helium leak testing machine twin chamber with recovery system” imported (January 2008) by M/s Tata Toyo Radiator Ltd. through JNCH, Mumbai commissionerate were classified under CTH 9026 8090 and exempted from BCD. Since the imported machinery was not a flow meter, level gauge, manometer or a heat meter but a testing machinery, it should have been correctly classified under CTH 90318090 and was, therefore, not eligible for exemption. The mis-classification and incorrect grant of exemption resulted in short levy of duty of Rs. 16.05 lakh.

On the matter being pointed out (June 2008), the department confirmed (March 2009) a demand of Rs. 16.05 lakh against the importer. Further progress has not been intimated (January 2010).

Reply of the Ministry has not been received (January 2010).

### **5.11 Other cases**

In eight other cases of mis-classification involving short levy of duties of Rs. 78.02 lakh, the department had accepted (till January 2010) audit observations in six cases and reported recovery of Rs. 15.84 lakh in three cases.