

CHAPTER VI

MIS-CLASSIFICATION OF GOODS

During test check (May 2012 to April 2014) of records, we noticed that assessing officers mis-classified various imported goods which caused short levy/non levy of customs duties of ₹ 9.99 crore. They are discussed in the following paragraphs and six cases of mis-classification of goods have been listed in **Annexure 6**.

Motor cycle parts misclassified as articles of iron or steel

6.1 Parts of Motorcycle are classifiable under Customs tariff heading (CTH) 871410 as parts and accessories of vehicles of heading nos. 87.11 to 87.13 and assessable to BCD at the rate of 10 per cent.

M/s Daido India Pvt. Ltd. imported (October 2013 to May 2014) 57 consignments of 'Motorcycle chain and sprockets and parts thereof' from Thailand valued at ₹ 24.78 crore through ICD, Tughlakabad. The imported goods were classified under CTH 73151100 and 84839000 and cleared after levy of basic customs duty at 2.5 per cent and 6 per cent (up to 31 December 2013), and at 'nil' rate of duty and 5 per cent (from 1 January 2014) in terms of serial nos. 968 and 1284 of notification nos. 46/2011 dated 1 June 2011 (as amended).

Audit scrutiny revealed that the Motorcycle chain and sprockets and parts thereof were classifiable under CTH 8714090 as other parts and accessories of motorcycle which attracts BCD at the rate of 10 per cent. Thus, misclassification of imported goods led to short levy of duty amounting to ₹ 2.66 crore.

The matter was pointed out to the Department/ Ministry in April/May/September 2014, their reply is awaited (January 2015).

Motor parts misclassified as instruments for measuring and checking the flow, level and pressure of liquids or gases

6.2 Parts and accessories if suitable, for use solely or principally with a particular kind of machine, instrument or apparatus or with a number of machines, instruments or apparatus of the same heading are to be classified with the machines, instruments or apparatus of that kind (Note 2(b) to Section XVIII of the Custom Tariff).

'Hot Film Air Mass Meters' is used to measure the air mass flow in internal combustion engines of motor vehicles to enable and to adjust the amount of injection current to the exact power requirement, air pressure and air temperature in order to ensure statutory emission limits. As they are principally used in motor vehicles of chapter 87, the said goods are classifiable under CTH 8708 and leviable to BCD at the rate of 10 per cent.

Eighty five consignments of 'Hot film air mass meters', were imported by M/s Bosch Ltd. between April 2012 to March 2013. Out of this, 45 consignments were classified under CTH 90268090 as 'Other instruments or apparatus for measuring and checking the flow, level, pressure or other variables of liquids or gases' and the remaining 40 under CTH 90328990 as 'Other automatic regulating or controlling instruments and apparatus' and levied 'BCD at 'nil' or 7.5 percent instead of applicable 10 per cent. The misclassification of goods has resulted in short levy of duty to the tune of ₹ 1.82 crore.

This was pointed out to the Ministry in October 2014, their response has not been received (January 2015).

Surgical microscope misclassified as other instruments and appliances

6.3 Surgical Microscope and accessories thereof are classifiable under Customs Tariff heading (CTH) 9011 and leviable to BCD/CVD at the rate of 7.5/12 percent respectively.

Fifty five consignments of 'Surgical microscope' imported through Air Cargo Complex (ACC), Mumbai during April 2012 to March 2013 were classified under CTH 90185090/90189099 as other instruments and appliances used in Medical, Surgical, Dental or Veterinary Science and assessed to BCD at rate of 5 per cent under notification no.12/2012-cus serial no.473 dated 17 March, 2012 and also exempted from CVD under notification no.12/2012-CX dated 17 March, 2012 instead of applicable BCD/CVD rate of 7.5/12 percent respectively. The misclassification resulted in short levy of duty of ₹ 1.19 crore.

This has been brought to the notice of the department/Ministry in November 2013/September 2014, their reply is awaited (January 2015).

Brush cutters misclassified as mechanical appliances for dispersing or spraying liquids/Harvesting or threshing machinery

6.4 Brush Cutters, being portable machines having self contained internal combustion engine mounted on a light metal frame and equipped with cutting devices are classifiable under the tariff item "84672900" of the Customs Tariff in view of their exclusion from heading 8433 as per the explanatory notes to Harmonised System of Nomenclature (HSN). The subject goods are leviable to additional duty of customs equivalent to excise duty at the rate of 12 per cent, in terms of serial no.75 of notification no.18/2012-CE dated 17 March 2012.

Seventeen consignments of Brush cutters/Reapers/Grass cutters of various models, imported (May 2012 and March 2013) by M/s Foggers India Pvt. Ltd. and five others through Chennai (Sea) Commissionerate were classified under various headings like "8424/8433" of the Customs and central Excise Tariff considering them as Agriculture/Horticulture/Harvesting machinery and additional duty of customs at 'nil' rate instead of 12 per cent. The imported

goods being grass cutting machinery merit classification under CTH 8467 in view of the aforesaid HSN explanatory notes.

The misclassifications had resulted in short collection of duty of ₹ 87.33 lakh.

On this being pointed out, the Ministry reported (January 2015) recovery of ₹ 2.22 lakh and interest of ₹ 0.31 lakh from two importers (M/s Rekha Agriplus Ltd, M/s Venkateshwara Engg. Works) and confirmed a demand of ₹17.70 lakh in respect of M/s Greaves Cotton Ltd. Recovery in respect of the remaining five importers is awaited (January 2015).

Parts and accessories of motor vehicles misclassified as Gears and gearing

6.5 In terms of Note 2(e) to sections XVII of Customs Tariff, only those parts and accessories which constitute integral parts of engines or motors of heading 8483 are excluded from this section whether or not they are identifiable as the goods of this section. All other parts, if they are identifiable as being suitable for use solely or principally with the motor vehicles of headings 8701 to 8705, would therefore remain classified under Section XVII under heading 8708 of the Customs Tariff and leviable to BCD at the rate of 10 per cent.

M/s Carraro India Pvt. Ltd. and M/s Jtekt Sona Automotive India Pvt. Ltd. imported (February 2010 to March 2014) 66 consignments of 'Torgue converters/Gears, Reduction parts (parts of automotive steering)' through JNCH, Nhava Sheva/ICD Tughlakabad. The imported goods were misclassified under CTH 84834000/87089400 as transmission shafts and gears / gearing instead of under CTH 8708 and levied BCD at the rate of 7.5 percent instead of 10 percent . The misclassification resulted in short levy of duty of ₹ 73.99 lakh.

This was pointed to the Department/Ministry in January/September 2014, their reply is awaited (January 2015).

Railway maintenance or service vehicles misclassified as Railway goods vans and wagons

6.6 Railway or tramway maintenance or service vehicles, whether or not self propelled (for example, workshops, Cranes, ballast tampers, track liners, testing coaches and track inspection vehicles etc. are classifiable under CTH 8604 attracting CVD at the rate of 12 per cent.

M/s Pratibha Industries Ltd. and M/s HCC Samsung JV had imported (September 2013 to November 2013) eight consignments of 'Floor shaft car/segment cars' etc at an assessable value of ₹ 8.69 crore through ICD, Tughlakabad. The imported goods were classified under CTH 86069900 and assessed to CVD at the rate of 6 per cent instead of 12 per cent.

The imported goods were rail bound segment cars and floor shaft cars meant for tunneling equipment and merit classification under CTH 8604 and attract

CVD at the rate of 12 per cent. Thus, misclassification of imported goods resulted in short levy of duty amounting to ₹ 61.44 lakh.

The facts were brought to the notice of the Department/Ministry in January/September 2014, their response is awaited (January 2015).

Food processing machinery misclassified as other machinery for manufacture of food or drink

6.7 Machinery, plant or laboratory equipment, whether or not electrically heated for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting etc., other than machinery or plant of a kind used for domestic purposes is classifiable under CTH 8419 and leviable to BCD at the rate of 10 per cent.

M/s Balaji Wafers Pvt. Ltd. and another imported (June/November 2013) three consignments of 'Food processing machinery snack frying system' through JNCH, Nhava Sheva, Mumbai. The goods were misclassified under CTH 84388090 as 'other machinery for industrial preparation of food or drink' levying BCD at the rate of 5 per cent instead of applicable 10 per cent. Thus, misclassification resulted in short levy of duty to the tune of ₹ 52.09 lakh.

This was pointed out to the department /Ministry in December 2013/October 2014, their reply is awaited (January 2015).

Rice mill rubber roller misclassified as rice mill machinery

6.8 'Rice Mill rubber roller' are classifiable under CTH 40169990 and leviable to BCD at the concessional rate of 7 per cent under notification no.46/2011-cus dated 1 January 2012 (serial no.534, Appendix-I), when imported from Vietnam. The CBEC (Board) in their circular no. 2/90-CX.3 dated 11 January 1990 also clarified that 'Rubber Rolls' used in 'Rice mill' merit classification under CTH 4016. Further, Central Excise notification no. 12/2012 (serial no.155) dated 17 March 2012 clearly specify classification of 'Rice rubber rolls' for 'Rice Machinery' under CTH 4016.

M/s PRS Tradecom and four others imported (May 2012 to February 2013) 19 consignments, of "Rice mill rubber roller" through JNCH, Mumbai/Chennai (Sea) Commissionerate. The imported goods were mis-classified under CTH 84378090 as rice mill machinery and levied BCD at the concessional rate of 2.5 per cent allowing benefit under notification no.46/2011-cus (serial no. 1170) instead of applicable rate of 7 per cent. Thus, misclassification of the imported goods resulted in short levy of duty to the tune of ₹ 44.07 lakh.

On being pointed out to the Department in January/September/October 2014, Chennai Customs House authorities issued show cause notice to M/s Srinivas Mill stores. Reply in respect of other importers is awaited (January 2015). Ministry response has not been received (January 2015).

Animal feed preparations misclassified as fish meal unfit for human consumption

6.9 As per the HSN Note given under Chapter 23, Customs tariff heading (CTH) 2309 includes products of a kind used in animal feeding, not elsewhere specified or included, obtained by processing vegetable or animal materials to such an extent that they have lost the essential characteristics of the original material. "Squid Liver Powder" is a high quality ingredient for aqua feed (especially shrimp) which is prepared from squid liver paste and well-fined soyabean meal in equal proportions is appropriately classifiable under CTH 2309 and leviable to BCD at 30 per cent.

Four consignments of "Squid Liver Powder" imported (April to November 2012) by M/s Godrej Agrovet Ltd. & three others through Chennai (Sea), Commissionerate were classified under CTH 23012019/ 23012011/23012090 as "Other fish meal unfit for human consumption" and assessed to basic customs duty at 5 per cent instead of 30 per cent in terms of notification no.12/2012-cus (serial no.99) dated 17 March 2012.

The imported item being a mixtures of nutrients viz. energy nutrients obtained from animals and body building nutrients (proteins) obtained from leguminous vegetables in appropriate proportions, merited classification under CTH 23099090 as "other preparations of a kind used in animal feeding" and leviable to basic customs duty at 30 per cent. The misclassification had resulted in short levy of duty of ₹ 34.04 lakh.

The department while accepting audit observations issued a protective demand to one of the importers (M/s Avanti Feeds Ltd). Reply from the Ministry was awaited (January 2015).