

## CHAPTER V

### MIS-CLASSIFICATION OF GOODS

During test check (July 2009 to August 2013) of records for the period February 2009 to March 2013, we noticed that assessing officers mis-classified various imported goods which caused short levy/non levy of customs duties of ₹ 20.70 crore. They are discussed in the following paragraphs.

#### Assessing officer mis-classified Crude palm stearin as mixture of fatty acids

**5.1** Central Excise & Customs (Board) in their circular dated 3 December 2002 (no.81/2002) instructed field formations to chemically examine imported 'Palm stearin' to verify whether they are 'Glycosides of fatty acids' (CTH 1511) or a 'mixture of fatty acids' Customs tariff heading (CTH) 3823 and classify it accordingly. The Supreme Court of India in Civil Appeal no.6979-6982 of 2009 in case of C.C.E.C & S.T., Makhapatnam v. JOCIL India, vide their order dated 15 December 2010 has held that 'Palm stearin (Crude/RBD) should be classified under CTH 3823'. The Board implemented Supreme Court decision after seven months vide customs circular no.31/2011 dated 26 July 2011 and clarified that 'Crude palm stearin' shall be assessed under CTH 38231111 and instructed its field formations to finalise all the pending cases accordingly.

M/s Hindustan Unilever Ltd., and another imported (March/May/July 2011) and cleared six consignments of 'Crude palm stearin' valuing ₹ 51.78 crore from Custom House MP & SEZ (Mundra). In absence of any instructions to the field formations for classification of 'Palm stearin' (December 2010 to July 2011) based on the aforesaid Apex Court's judgment, the department allowed to classify the same under CTH 15111000 as per the earlier circular of December 2002. This delay in implementation of the judgment resulted in loss of revenue to the extent of ₹ 11.17 crore.

Deputy Commissioner, Custom House, MP&EZ Mundra stated (January 2012) that decision to implement the Apex Court Judgment was required to be taken in consultation with the Law Ministry and hence, time was taken to issue clarification.

The fact remains that the delay in issue of circular to implement Apex Court's decision resulted in loss of revenue. Had the Board issued interim instructions to assess import of 'Crude palm stearin' provisionally in view of Apex Court judgment, the government could have protected the loss of revenue.

Ministry's response had not been received (March 2014).

#### Assessing officer mis-classified TV projectors as Projectors used with an automatic data processing system

**5.2** 'Projectors' that are solely or principally used in an automatic data processing system are classifiable under CTH 85286100, whereas other

projectors which are capable of working with automatic data processing machines as well as television and video are classifiable under CTH 85286900.

M/s Epson India Ltd., and seven others had imported (March 2011 to March 2013) 39 consignments of 'Projectors' of various models through Chennai (Sea), Chennai (Air), Kolkata (Port), Kolkata (Air) Commissionerate. and ICD, Dadri, U.P. These goods were classified under CTH 85286100 and assessed at concessional rate of duty under serial no.17 of notification no.24/2005-cus dated 1 March 2005.

Audit noticed from the products catalogue that the imported models of 'Projectors' were having RS-232 input, S.Video input and Composite Video input provision and hence could be used with an automatic data processing system as well as with television and video. Accordingly, the imported goods merited classification under CTH 85286900. Thus, mis-classification resulted in short levy of duty of ₹ 2.54 crore.

Ministry's response had not been received (March 2014).

#### Assessing officer mis-classified maize (corn) seed as vegetable seeds for planting and sowing

**5.3** 'Maize (corn) seeds' is classified under (CTH) 10051000 and leviable to Basic customs duty (BCD) at the rate of 50 per cent under notification no.21/2002-cus dated 1 March 2002 (serial no.20). As per note 3 under chapter 12 of the Customs Tariff Act, 1975, tariff heading 1209 does not apply to 'Leguminous vegetables or sweet corn' (chapter 7) and 'Cereals' (chapter 10), even if for sowing.

M/s Advanta India Ltd., and eleven others imported (June 2011 to January 2013) 'Sweet corn seeds as vegetables seed for planting and sowing' through JNCH, NCH, Mumbai and Chennai (Sea) Commissionerates. The department incorrectly assessed the goods under CTH 12099190.

As per Rule 3 (a) of General Rule for Interpretation (GRI), the heading which provides most specific description shall be preferred to heading providing more general description. In the instant case, the item described in Bill of entry was 'Sweet corn seed (vegetable seed for planting and sowing)', accordingly, they merit classification under CTH 10051000. The misclassification resulted in short levy of duty of ₹ 2.20 crore.

Assistant Commissioner, JNCH in cases of two importers (M/s Namdhari Farm Fresh Pvt. Ltd., and M/s Advanta India Ltd) reported (April 2013) that less charge notices have been issued. However, in case of M/s East West Seeds India Pvt. Ltd., for similar imports, Customs authorities JNCH, stated (November 2011/ May 2013) that the sweet corn is a vegetable and the seeds of sweet corn are also vegetable seed and rightly classifiable under CTH 12099190.

Ministry's response had not been received (March 2014).

#### Assessing officer mis-classified 'Yeast' as medicament

**5.4** As per the note 1 (f) to Chapter 21 of Customs Tariff, 'Yeast' not put up as a medicament is to be classified under Chapter 21 and leviable to basic customs duty at 30 per cent and additional duty of customs at 'Nil' rate in terms of notification no.3/2006-CE (Sl. No. 23) dated 1 March 2006. 'Saccharomyces boulardii' is a tropical strain of yeast often marketed as a probiotic in a lyophilized (freeze dried) form.

Four consignments of Saccharomyces boulardii, imported (May to October 2011) by M/s Dr. Reddy's Laboratories through Chennai (Air) Commissionerate were incorrectly classified under CTH 3003 3900/2942 0090 as 'medicament'/other organic compound' and assessed to basic customs duty at 10 per cent/7.5 per cent and additional duty of customs at 5 per cent/10 per cent respectively. The incorrect classification had resulted in short collection of duty of ₹ 84.38 lakh.

This was pointed out to Ministry in November 2013, their response had not been received (March 2014).

#### Assessing officer mis-classified flanges as parts of wind operated electricity generator

**5.5** Note 1 (g) to Section XV of the Customs Tariff excludes 'parts of general use', as defined under Note 2 (a) to Section XV. Accordingly, articles of CTH 7307, 7312, 7315, 7317 or 7318 and similar articles of base metal, are not covered under Chapter, the section 'Flanges' are classifiable under CTH 7307 of the Customs tariff and leviable to BCD at the rate of 10 per cent.

Sixteen consignments of 'Flanges' imported (May 2011 to March 2013) by M/s Suzlon Towers and Structures Ltd. and two others through Chennai (Sea), Commissionerate, were classified and assessed under CTH 85030010 as parts of wind operated electricity generator and levied BCD at the rate of 25 per cent. 'Flanges' fall under the category 'parts of general use' as per the aforesaid provisions and merit classification under CTH 7307 leviable to BCD at the rate of 10 per cent. The incorrect classification resulted in the short levy of customs duty amounting to ₹ 59.86 lakh.

Deputy Commissioner (IAD), Chennai reported (May 2012) recovery of ₹ 0.47 lakh from M/s Leitwind Shriram and issue of demand notice to M/s Suzlon Towers and Structures Ltd. Ministry's response had not been received (March 2014).

#### Assessing officer mis-classified animal feed preparations as fish meal unfit for human consumption

**5.6** As per the Chapter note, heading (CTH) 2309 includes products of a kind used in animal feeding, not elsewhere specified or included in the chapter which are 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', 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 of the Customs Tariff and leviable to basic customs duty at 30 per cent.

Six consignments of 'Squid Liver Powder', imported (April 2011 to March 2012) by M/s Avanti Feeds Limited and M/s Grobest Feeds Corporation (India) Limited through Chennai (Sea) Commissionerate were incorrectly classified under tariff item 23012090/23012019 as "Other fish meal unfit for human consumption" and assessed to basic customs duty at 5 per cent in terms of serial no.53 of the notification no. 21/2002-cus dated 1 March 2002.

In view of its preparation consisting of mixtures of nutrients viz. energy nutrients obtained from animals and body building nutrients (proteins) obtained from leguminous vegetables in appropriate proportions, it is rightly classifiable under tariff item 23099090 as "Other preparations of a kind used in animal feeding" rather than under CTH 2301 and leviable to basic customs duty at the rate of 30 per cent. The misclassification had resulted in short levy of duty of ₹ 50.17 lakh.

When we pointed this out (February/October 2012/February 2013) there was no response from the department. However, in a similar issue raised earlier, the department had accepted the audit's contention and confirmed the demand in May 2011. Ministry's reply is awaited (March 2014).

#### Assessing officer mis-classified Rice Mill rubber roller as rice mill machinery

**5.7** Rice Mill rubber roller' are classifiable under Customs tariff heading (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 Alaska Rubbers Pvt. Ltd., and four others imported (August 2012 to March 2013) 18 consignments of 'Rice Mill rubber roller' from Vietnam through ICD, Tughlakabad, New Delhi and Chennai (Sea) commissionerate. The Assessing officer incorrectly classified imported goods under CTH 84379020 and levied BCD at the concessional rate of 2.5 per cent under notification no.46/2011-cus (serial no.1170). Thus, mis-classification of the imported goods resulted in short levy of duty of ₹ 46.44 lakh.

Ministry reported (August 2013) in respect of six consignments that a protective demand for ₹ 8.19 lakh had been issued to M/s Alaska Rubbers Pvt. Ltd. Further progress was awaited (March 2014).

### Assessing officer mis-classified surgical microscopes as other instruments and appliances

**5.8** 'Surgical microscopes' other than ophthalmic microscopes are classifiable under CTH 9011.

'Surgical microscopes' imported through Air Cargo Complex (ACC), Nedumbassery (Cochin) and Chennai (Air) Commissionerates during the period May 2012 to January 2013 were classified under CTH 90189099 as other instruments and appliances used in medical, surgical, dental or veterinary science and assessed to concessional rate of duty under notification no.12/2012-cus dated 17 March 2012. The goods imported are rightly classifiable under CTH 9011. The misclassification resulted in short levy of duty of ₹ 41.08 lakh.

Ministry reported (January 2014) recovery of ₹ 17.65 lakh in respect of imports made through Cochin Commissionerate. Reply in respect of imports made through Chennai Commissionerates is awaited (March 2014).

### Assessing officer mis-classified cameras for medical or surgical examination as Television cameras/digital cameras/medical appliances

**5.9** Cameras, specifically designed for medical or surgical examination of internal organs, are classifiable under CTH 9006 3000 and their parts are classifiable under CTH 9006 9100 and leviable to BCD at the rate of 10 per cent and additional duty of customs equivalent to excise duty at 10 per cent effective up to 16 March 2012 and at 12 per cent effective from 17 March 2012. Further, as per HSN note under CTH 9006, a camera presented separately even if it is a specialized part of another instrument merits classification under CTH 9006.

Forty eight consignments of 'Endoscopy cameras and other Digital cameras' meant for medical purposes, imported (December 2011 to March 2012) by various importers through Chennai (Air), Commissionerate were incorrectly classified under CTH 901890 or 852580 as 'medical instruments and appliances used in medical, surgical science etc.,' or 'Television cameras, digital cameras etc.,' while their parts were classified under sub-heading 901850/901890 as 'other ophthalmic instruments and appliances' or 'surgical tools'. The department cleared imported goods at concessional rate of basic customs duty under notification no.21/2002-cus dated 1 March 2002 (as amended) and also levied additional duty of customs equivalent to excise duty at Nil/5/10 per cent (notification nos.(i) 6/2006-CE), serial no.59 (ii) notification no. 10/2006-CE serial no.26.

As specific tariff item exists for the classification of cameras, specially designed for medical or surgical examination of internal organs, and also in respect of their parts, accordingly, those merit classification under CTH 9006 and are leviable to appropriate duty. The incorrect classification resulted in short levy of duty of ₹ 37.63 lakh.

Ministry's response had not been received (March 2014).

**Assessing officer mis-classified refined and edible grade Fats and oils as goods for cosmetic and pharmaceutical use**

**5.10** 'All Fats and oils, refined and edible grade' falling under CTH 1515 are eligible for concessional rate of duty in terms of serial no.33B of customs notification no.21/2002 dated 1 March 2002.

M/s N.V Organics Pvt. Ltd., imported 20000 kgs of 'Shea Butter' through JNCH, Commissionerate in January 2012 and the department classified the goods under CTH 15159099 as other edible grade oil and cleared it at the concessional rate under notification dated 1 March 2002.

Audit scrutiny revealed that the test report indicates that the imported goods are for cosmetic use and not fit for food and pharmaceutical application, as such, the exemption allowed was incorrect. This resulted in short levy of duty of ₹ 37.30 lakh.

Additional Commissioner of Customs, JNCH reported (June 2013) that the objection was forwarded to the concerned assessing group for action.

Ministry's response had not been received (March 2014).

**Assessing officer mis-classified motor parts as instruments for measuring and checking the flow, level and pressure of liquids or gases**

**5.11** As per Note 2 (b) to Section XI, 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.

'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, the 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.

Twenty five consignments of 'Hot film air mass meters', imported (June 2011 to March 2012) by M/s Bosch Ltd., through Chennai (Sea) commissionerate were mis-classified under CTH 90268090 as 'Other instruments or apparatus for measuring and checking the flow, level, pressure or other variables of liquids or gases'. This mis-classification of goods resulted in short collection of duty of ₹ 34.96 lakh.

Deputy Commissionerates of Customs (IAD), Custom House, Chennai reported (February 2013) that a SCN was issued for ₹ 17.74 lakh in respect of 13 consignments.

Ministry's response had not been received (March 2014).

### Assessing officer mis-classified Joss Powder

**5.12** As per note 1 (a) below chapter 44 of the Customs Tariff Act (CTA), 1975, wood, in chips, shaving, crushed, grounded, powdered form, a kind used, inter alia, in perfumery is excluded from the purview of chapter 44 of the CTA, 1975. The imported goods being raw material for making 'Agarbatti' were classified under CTH 1211, as per aforesaid chapter note.

M/s Ganesh Industries and others imported (February 2011 to March 2013) 51 consignments of 'Joss powder (wooden dust powder for making agarbatti)' through JNCH, Chennai (Sea), Kochi & Ludhiana (Port) commissionerates. The department assessed these consignments under CTH 44013000.

As per aforesaid chapter note these goods merits classification under CTH 12119029 and should be assessed accordingly. The misclassification resulted in short levy of duty of ₹ 28.88 lakh.

Additional Commissioner of Customs, JNCH in respect of ₹ 7.76 lakh objected reported that (May 2013) an amount of ₹ 3.79 lakh was recovered from the importers and SCN cum demand notices for the remaining amount were issued.

Ministry's response had not been received (March 2014).

### Assessing officer mis-classified Operating tables as X ray apparatus/ Medical instruments and appliances

**5.13** As per the Harmonised System of Nomenclature (HSN) notes to Chapter 94, 'Operating Tables', meant for general or specialized surgery, designed to enable the patient to be placed in the position required for different operations by adjusting, inclining, rotating or raising the table are included under CTH 9402 and assessable to BCD at 10 per cent and additional duty of customs equivalent to excise duty at 5 per cent under notification no. 6/2006-CE dated 1 March 2006, serial no.70.

Four consignments of Operating table with standard accessories imported (June and August 2011, February and March 2012) by M/s Larsen and Toubro Limited and two others were incorrectly classified under CTH 9018/9022 as 'Medical instruments and appliances / X ray apparatus' and assessed to BCD at 5 per cent in terms of notification no. 21/2002 dated 1 March 2002 and additional duty of customs at Nil / 5 per cent in terms of notification no.6/2006-CE/ notification no. 10/2006-CE respectively. Thus, incorrect classification resulted in short levy of duty of ₹ 19.69 lakh.

This was pointed out to the Ministry in December 2013, their response had not been received (March 2014).

### Assessing officer mis-classified wooden ice cream sticks/spoons

**5.14** 'Wooden Ice cream sticks/spoons' are classifiable under CTH 4421 9019.

M/s Tag Overseas imported seven consignments 'Ice cream wooden sticks/spoons' for assessable value of ₹ 1.07 crore during the period from May 2012 to August 2012. The goods were classified under CTH 44042090 as 'wooden sticks suitable for the manufacture of walking sticks, tool handles pickets and the like' and assessed accordingly under notification no.12/2012 (serial no.157). Audit scrutiny revealed that the imported goods were finished articles of wood and were correctly classifiable under CTH 44219019. Thus, misclassification of imported goods resulted in short levy of duty of ₹ 15.18 lakh.

Further, analysis of ICES 1.5 all India import data for the period April 2012 to March 2013 revealed that 57 consignments of similar goods were imported from various ports of Delhi, Goa, Mumbai, Gujarat and Tamil Nadu and apparently misclassified resulting in short levy of customs duties.

Ministry's response had not been received (March 2014).

#### Assessing officer mis-classified Feeder cables as parts of telephone sets

**5.15** Insulated wire, cable including coaxial cable is classifiable under Customs tariff heading (CTH) 8544 and leviable to basic customs duty at the rate of 7.5 per cent.

Five consignments of 'Feeder cables' valued at ₹ 189.83 lakh, imported (September 2009) by M/s Shyam Telelink Ltd., through Chennai (Air) Customs were incorrectly classified under CTH 85177090 as 'parts of telephone sets including telephones for cellular networks' and assessed to basic customs duty at 'nil' rate under Customs notification no.24/2005 (serial no. 13) dated 1 March 2005.

Audit observed that imported goods would be appropriately classifiable under CTH 85442090 as 'other coaxial electric conductors', attracting levy of basic customs duty at 7.5 per cent. The incorrect classification resulted in short levy of duty amounting to ₹ 14.25 lakh.

This was pointed out to the Ministry in December 2013, their reply is awaited (March 2014).

#### Assessing officer mis-classified Digital Cameras

**5.16** 'Digital Cameras' having both still images and moving images facilities, like Camcorder or video recorder, are classifiable under CTH 85258030 of the Customs and Central Excise Tariff and leviable to BCD at the rate of 10 per cent. The Board, in its Circular No. 32/2007 Customs dated 10 September 2007, had clarified that the subject goods are classifiable under CTH 85258030 based on its principal functions and features.

Eighteen consignments of 'Panasonic Brand Digital Image Video Cameras' imported during February 2009 having a total value of ₹ 68.10 lakh were incorrectly classified under CTH 85258020 as 'Digital Still Image Video Cameras'



and were granted exemption from levy of basic customs duty in terms of serial no.13 of notification no.25/2005–cus dated 1 March 2005.

Audit pointed out that the imported models could capture both still and moving images and are to be classified as “Camcorders” under CTH 85258030 of the Customs and Central Excise Tariff, as per the Board’s Circular cited above and leviable basic customs duty at the rate of 10 percent. The incorrect exemption availed in terms of notification no.25/2005 dated 1 March 2005 (serial no.13) resulted in short levy of customs duty of ₹ 8.27 lakh.

This was pointed out to the Ministry in December 2013, their reply is awaited (March 2014).