

CHAPTER VII MIS-CLASSIFICATION OF GOODS

During test check (August 2014 to June 2015) of records, we noticed that assessing officers mis-classified various imported goods which caused short levy/non levy of customs duties of ₹ 1.70 crore. They are discussed in the following paragraphs.

Non levy of safeguard duty due to misclassification

7.1 As per the notification no.3/2014-cus (safeguard) dated 28 August 2014, dehydol i.e. saturated fatty alcohol (C12-C14) falling under CTH 382370 originating in, or exported from Thailand and imported into India is subject to levy of safeguard duty at the rate of 20 per cent ad valorem. 'Dehydol saturated fatty alcohols' merit classification under Customs tariff heading (CTH) 38237090 and attract safeguard duty.

Audit scrutiny revealed that M/s BASF India Ltd. had imported (November /December 2014) five consignments of 'Dehydol' from Thailand through JNCH, Nhava Sheva, Mumbai. The imported goods were classified under Customs tariff heading (CTH) 38249090 as 'Chemical for Allied industry – other' instead of under CTH 382370 and assessed without levy of Safeguard duty. There was no evidence of payment of safeguard duty through manual challan either. This had resulted in non levy of safeguard duty of ₹ 71.69 lakh.

The matter was pointed to the Department/Ministry in March/ 2015, their response is awaited (November 2015).

Shilajit misclassified as 'Other – mineral substances not elsewhere specified'

7.2 'Mineral waxes' e.g. Shilajit are classifiable under Customs tariff heading (CTH) 27 and attract Countervailing duty (CVD) at the rate of 14 per cent.

M/s S.K. Trading Company and four others imported (July 2013 to January 2015) 21 consignments of 'Shilajit stone (Mineral product)' through ICD, Tughlakabad. Audit scrutiny revealed that the item was misclassified under CTH 25309099 as 'Other – mineral substances not elsewhere specified' and exempted from levy of CVD. However, Shilajit stone known as asphaltum is classifiable under CTH 27149090 as 'Other-asphaltites and asphaltic rocks' attract CVD at the rate of 14 per cent. This resulted in short levy of duty amounting to ₹ 25.45 lakh.

This was pointed to the Department/Ministry in January/ 2015, their reply is awaited (January 2016).

Rice mill rubber roller misclassified as rice mill machinery

7.3 'Rice mill rubber rollers/Paddy de-husking rubber rollers' are classifiable under Customs tariff heading (CTH) 40169990 as 'Other articles of rubber' and leviable to basic customs duty at 10 per cent. The CBEC (Board) in their circular no.2/1990-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 specifies classification of 'Rice rubber rolls' for 'Rice machinery' under CTH 4016.

M/s KBM International and three others imported (August 2013 to January 2014) 21 consignments of 'Rice mill rubber rollers/Paddy de-husking rubber rollers' through Sea Customs, Chennai. The goods were incorrectly classified under CTH 84379020 as 'Parts of rice mill machinery' and assessed to basic customs duty at the rate of 7.5 per cent/2.5 per cent/nil rate prevalent during the period of import. Thus, incorrect classification resulted in short levy of duty of ₹ 23.03 lakh.

On this being pointed out (June 2014), the department stated (August 2014/February 2015) that demand notices have been issued to all the four importers (M/s KBM International, M/s Om Rubbers, M/s Nirmala Agencies and M/s Srinivas Mill stores). The department also stated that the classification of 'Rubber roller' under CTH 4016, based on Central Excise notification no.12/2012 dated 17 March 2012 was not legal and correct and the goods were to be classified as per the Interpretative Rule read with section note and chapter note.

The reply of the department is not acceptable because:-

- (i) The Board in their circular no.2/1990-CX.3 has clarified that 'Rubber roller' used in 'Rice Mill' merit classification under CTH 4016.
- (ii) As per 3 (a) of the Interpretative Rules, the heading which provides the most specific description should be preferred to headings providing a more general description. 'Rubber roller' is more specific than 'Parts of Rice mill machinery'.

(iii) Even though ‘Rubber roller’ is made up of metal and rubber, the generic description of the imported articles is ‘Rubber roller’ and hence, the classification of the goods has to be made as ‘Articles of rubber’ under CTH 4016.

(iv) In the case of Collector Vs. Kohinoor Rubber Mills – 1993 (67) ELT 816 (Tribunal) it was held that Rice rubber rolls are classifiable under sub-heading 4016.99. This decision was upheld by the Hon’ble Supreme Court as reported in 1997 (92) ELT 36 (SC).

This was communicated to the Department/Ministry in June/ 2015, their response is awaited (June 2015).

The Ministry had accepted (November 2015) similar observation pointed in Audit Report No. 8 of 2015 (sub paragraph No. 6.8).

‘Woven fabrics’ misclassified as ‘Other woven fabrics’ containing synthetic filaments

7.4 ‘Woven fabrics’ containing 85 per cent or more by weight of polyester filaments are classifiable under Customs tariff heading (CTH) 540761/540769 and leviable to BCD at the rate of 10 per cent or ₹ 36 per sqm whichever is higher.

M/s J&J Overseas Inc. imported (July/September 2014) three consignments of ‘Polyester viscose fabric containing 90 per cent polyester filament yarn and 10 per cent viscose yarn’ through ICD, Tughlakabad. Audit examination revealed that imported goods were classified under CTH 54077200 as ‘Other woven fabrics’ containing 85 per cent or more by weight of synthetic filaments-dyed and BCD was levied at ₹ 24 per sqm instead of higher rate of 10 per cent or ₹ 36 per sqm. This resulted in short levy of duty amounting to ₹ 13.77 lakh.

This was pointed out to the Department/Ministry in December 2014/, their reply is awaited (January 2016).

‘Articles of wood’ misclassified as ‘wooden sticks’ for manufacture of walking sticks

7.5 ‘Articles of wood’ classifiable under Customs tariff heading (CTH) 4421 attract CVD at the rate of 12 per cent.

M/s Shree Sai Overseas imported (April 2014 to July 2014) six consignments of ‘Wooden sticks (size 74 mm to 114 mm) through ICD, Tughlakabad. The department classified the imported goods under CTH 44042010 as ‘Wooden sticks, roughly trimmed but not turned, bent or otherwise worked suitable for

manufacture of walking sticks, tool-handles, split pole etc', and exempted it from CVD. As the imported wooden sticks being very small in size (74-114 mm) are unsuitable for manufacturing of walking sticks etc, hence are classifiable under CTH 44219090 as 'Other articles of wood' attracting CVD at the rate of 12 per cent. Further, the country of origin certificate also confirms that the imported goods are classifiable under CTH 44219090. Thus misclassification resulted in short levy of duty of ₹ 13.14 lakh.

Ministry reported (December 2015), issue of demand notice for ₹ 13.14 lakh. Further progress is awaited.

'Crude palm stearin' misclassified as 'Other Oil'

7.6 The Board vide customs circular no.31/2011 dated 26 July 2011 had clarified that 'Crude palm stearin' shall be assessed under CTH 38231111 and instructed its field formations to finalise all the pending cases accordingly. Accordingly, 'RBD palm kernel stearin' classifiable under Customs tariff heading (CTH) 38231112 attracts BCD at the rate of 20 per cent.

M/s Cargill India Pvt. Ltd., imported (April 2012) one consignment of 'RBD palm kernel stearin' through JNCH, Nhava Sheva. The department assessed the goods under CTH 15132910 levying BCD at the rate of 7.5 per cent instead of 20 per cent. This has resulted in short levy of duty of ₹ 11.55 lakh.

On this being pointed out (May 2015), the Ministry reported (January 2016) issue of demand cum show cause notice to the importer.

'Vegetable saps and extracts' misclassified as 'Other acyclic, alcohols and their halogenated derivatives'

7.7 'Vegetable saps and extracts' are classifiable under CTH 1302 and attract BCD at the rate of 15 per cent.

M/s Oriflame India Pvt. Ltd., imported (October 2013 to November 2014) 'TYROSTAT 09 (Water, Glycerin, Rumex Occidental extract)' through ICD, Tughlakabad. Audit scrutiny revealed that imported goods were classified as 'Other acyclic, alcohols and their halogenated, sulphonated, nitrated or nitroated derivatives' under CTH 29054900 and levied BCD at the rate of 7.5 per cent. Imported goods of the herb 'Rumex Occidental' are vegetable extracts and therefore merit classification under CTH 1302 instead of under CTH 2905. This resulted in short levy of duty amounting to ₹ 11.27 lakh.

This was brought to the notice of the Department/Ministry in December 2014, their reply is awaited (January 2016).



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