

CHAPTER V CLASSIFICATION

A few cases of incorrect classification of goods resulting in short-levy/non-levy of customs duties of ₹ 1.59 crore noticed in test check are discussed in the following paragraphs. These observations were communicated to the Ministry through six draft audit paragraphs.

5.1 Insecticides, rodenticides, fungicides and herbicides

‘Insecticides, rodenticides, fungicides and herbicides’ are classified under Customs tariff heading (CTH) 3808 and leviable to basic customs duty (BCD) at the rate of 10 per cent.

M/s J.U. Pesticides and Chemicals Pvt. Ltd. and M/s Tropical Agro System (India) Ltd. imported (January to July 2009) 44 consignments of ‘Imidacloprid 95 per cent technical’, ‘Pretilachlor 95 per cent technical’ and other chemicals used as insecticides, herbicides and fungicides for a value of ₹ 30.10 crore through Chennai (Sea), Commissionerate. The imported goods were classified under CTH 29420090/29201100 as ‘other organic compound’ /‘esters of other inorganic acids’ and assessed to concessional BCD at the rate of 7.5 per cent under notification no.21/2002-cus dated 1 March 2002 (serial no.553) instead of applicable rate of 10 per cent.

As these goods were ‘technical grade chemicals meant for pesticides/insecticides’ they merit classification under the CTH 3808 in terms of the Board’s circular no.727/43/2003-CX dated 29 July 2003 and 34/2007-cus dated 17 September 2007. The misclassification had resulted in short levy of duty of ₹ 87.47 lakh.

When we pointed this out (July/October 2009), the department stated (September 2009/July 2010) that demand notices have been issued to the importers. One importer had contested the audit observation while the other had given an interim reply. The department further stated that adjudication proceedings are being initiated. Further progress was awaited (December 2010).

We reported (October 2010) the matter to the Ministry; its response had not been received (December 2010).

5.2 Food Flavouring material

As per Section 5(b) of notes under Chapter 21 of the Customs Tariff Act (CTA), preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk or other liquids) for human consumption are classifiable under Customs tariff heading (CTH) 2106. ‘Food Flavouring material’ is classifiable under CTH 21069060 and leviable to BCD at the rate of 30 per cent under notification no 21/2002- cus dated 1 March 2002 (serial no.47).

M/s International Flavours and Fragrances India Ltd. and M/s Symrise Private Ltd. imported (May to December 2009) 20 consignments of ‘Tomato Flavour

Powder' through Chennai (Sea), Commissionerate. The department classified these goods under CTH 33021010 and levied BCD at the rate of 10 per cent under notification 21/2002 (serial no.119). The imported goods being food flavouring material merit classification under CTH 21069060 and leviable to BCD at 30 per cent under notification 21/2002 (serial no.47). The misclassification of these goods had resulted in short levy of duty of ₹ 23.87 lakh.

When we pointed this out (October 2009, January and February 2010), the department stated (January 2010) that the imported goods were comprising of synthetic aromatic chemicals and essential oils and hence classifiable under CTH 330210. The reply of the department was not acceptable, as it had been ascertained from the ingredient details that the imported goods were produced from Tomato/Tomato pulp. Accordingly these merit classification under CTH 2106.

We reported (September 2010) the matter to the Ministry; its response had not been received (December 2010).

5.3 Vegetable waxes

'Vegetable waxes' are classified under Customs tariff heading (CTH) 15211019 and attracts basic customs duty (BCD) at the rate of 30 per cent.

M/s Perfetti Van Mella India Pvt. Ltd., Gurgaon imported three consignments of 'Tren wax oil'. The department classified the imported goods under CTH 34049090 as 'Artificial waxes and prepared waxes' and levied BCD at the rate of 10 per cent. We found that the ingredients of 'Tren wax oil' were vegetable oils, wax esters, vegetable fat and soya lecithins. These products are used as anhydrous mould release agent for pastries and confectionery. Moreover, the importer was a manufacturer of confectionary items. Accordingly, 'Tren wax oil' should have been classified under CTH 15211019 as 'Vegetables waxes' and BCD at the rate of 30 per cent should have been levied instead of 10 per cent. This misclassification resulted in short levy of duty of ₹ 14.78 lakh.

This was reported (November/December 2009, February 2010) to the department, their reply had not been received (December 2010).

The reply of the Ministry had not been received (December 2010).

5.4 Marine diesel oil (Light diesel oil (LDO))

Marine gas oil {High speed oil (HSD)} is classifiable under Customs tariff heading (CTH) 27101930 and attracts BCD at the rate of 7.5 per cent and additional duty at ₹ 1.25/litre. But Marine diesel oil {Light diesel oil (LDO)} is classifiable under CTH 27101940 and attracts BCD at the rate of 10 per cent and additional duty at ₹ 2.50/ litre.

On conversion (April/October 2007) of two foreign run vessels to coastal run ones, oil remaining in bunkers was classified as HSD under CTH 27101930 instead of the correct classification of LDO under CTH 27101940 and levied duty at lower rates. This resulted in short levy of ₹ 12.88 lakh.

When we pointed this out (February 2007/December 2009), the department confirmed (December 2009) a demand of ₹ 10.70 lakh in respect of one consignment. However, in respect of another, although it issued a demand letter, it also stated that the objection was not legally sustainable as it was raised after the statutory time limit of six months.

The reply of the department was not accurate because the objection was initially raised in July 2007, well within the statutory time limit. The statement of facts, which is a subsequent stage in the audit reporting process, was issued thereafter in December 2009.

We reported (October 2010) the matter to the Ministry; its response had not been received (December 2010).

5.5 Shaft assembly drives

‘Shaft assembly drives’ are to be classified under Customs tariff heading (CTH) 8708 as ‘parts and accessories’ of Motor Vehicles, in terms of notes under CTH heading 8708 in the Harmonized system of nomenclature (HSN), wherein it was specifically mentioned that gear boxes of all types, shafts (Other than internal parts of engine) and other transmission parts and components (for example, propeller shafts, half shafts etc) are to be included under this heading as parts and accessories.

M/s Toyota Kirloskar Motor Pvt Ltd. imported (June 2009 to February 2010) 60 consignments of ‘Shaft assembly FR Drives’ through Chennai (Sea), Commissionerate. The department classified the imported goods under CTH 84831099 and levied BCD at the rate of 7.5 per cent instead of at the rate of 10 per cent. We found that the imported goods were actually ‘automotive parts used in the manufacture of Car’ and not parts of any machinery and merited classification under CTH 87085000. The incorrect classification resulted in short levy of duty of ₹ 12.43 lakh.

When we pointed this out (January/March 2010), the department replied (March 2010) that the shaft assembly drive was a connecting shaft between an engine (source of power) and the wheels, and the imported component acted as the transmission shaft. Moreover, since the goods were specifically covered under CTH 84831099, the assessment was in order.

The reply of the department was not acceptable. The importer is a manufacturer of motor vehicles falling under Chapter 87 and the goods were to be used solely/principally for the manufacture of motor vehicles. Besides, the imported goods have not been excluded from classification under CTH 8708 by the provisions of the notes to Section XVII of the Customs tariff. Moreover, the Technical write-up revealed that “Shaft assembly drive was nothing but a drive shaft, which was a transmission medium used to transfer the power from gear box to road wheels”. Further, as per note 3 of section XVII of the Customs tariff, a part or accessory which answers to a description in two or more of the headings of those chapters is to be classified under that heading which corresponds to the principal use of that part of accessory. Moreover, the CBEC in their circular dated 9 July 1990, specified classification of Gear boxes under CTH 8708 when they have been specifically designed for use with vehicle of section XVII of central Excise

tariff Act 1985. Accordingly, the imported goods merit classification under heading 8708, since they were used solely as parts of motor vehicles.

The response of the Ministry had not been received (December 2010).

5.6 Micro-crystalline wax

'Micro-crystalline wax' is classifiable under Customs tariff heading (CTH) 27129010 and attracts basic custom duty (BCD) and countervailing duty (CVD) at the rate of five per cent and 14 per cent respectively.

M/s Perfetti Van Mella India Pvt. Ltd., Haryana imported (June 2009 to January 2010), 23 consignments of 'Micro-crystalline wax' valued at ₹ 6.43 crore. The department incorrectly classified the imported goods under CTH 340490 as 'Artificial prepared waxes' and levied BCD at the rate of 10 per cent and CVD at the rate of 8 per cent. This misclassification resulted in short levy of duty of ₹ 7.44 lakh.

When we reported the matter (August 2010), the Ministry admitted the observation and stated (December 2010) that proceedings had been initiated to recover duty short levied. Further progress was awaited (December 2010).

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