

CHAPTER IV INCORRECT APPLICATION OF GENERAL EXEMPTION NOTIFICATIONS

The Government under section 25 (1) of the Customs Act, 1962 is empowered to exempt either absolutely or subject to such conditions as may be specified in the notification, goods of any specified description from the whole or any part of duty of customs leviable thereon. Some illustrative cases of non-levy/short levy of duties aggregating ₹ 4.53 crore due to incorrect grant of exemptions are discussed in the following paragraphs. These observations were communicated to the Ministry through six draft audit paragraphs.

4.1 LCD Panel

'LCD Panel' parts of Liquid crystal display (LCD) TV are classifiable under customs tariff heading (CTH) 85299090, attracting Basic Customs Duty (BCD) at the rate of 10 per cent ad valorem. Further, in terms of notification no. 21/2002-cus dated 1 March 2002 (serial no. 319A), as amended vide notification no. 77/2009-cus dated 7 July 2009, LCD panel, classified under CTH 8529, attracts concessional rate of duty of 5 per cent subject to submission of certificate issued by the concerned Excise Authority under Customs (Import of Goods at Concessional rate of duty for manufacture of excisable goods (IGCR) Rules 1996.



M/s L.G.Electronics had imported (July to August 2009) 40 consignments of 'LCD Panel' size 18.5 to 47 inches through JNCH Commissionerate, Mumbai. The department classified these goods under CTH 90138010 as 'Liquid crystal devices not constituting articles provided for more specifically in other headings' and granted exemption under customs notification no. 24/2005 (serial no. 29) dated 1 March 2005. However, the imported goods being parts for manufacture of LCD TV merited classification under CTH 85299090 and leviable to BCD at the rate of 10 per cent, under aforesaid notification as the importer had not fulfilled the prescribed condition of IGCR Rules 1996. The misclassification and incorrect grant of exemption resulted in non levy of duty of ₹ 2.76 crore.

When we pointed this out (October/December 2009), the department reported (June 2010/June 2011) recovery of ₹ 94.41 lakh alongwith interest of ₹ 8 lakh in 21 consignments.

While in respect of another 18 consignments, the department reported (May 2010) that LCD Panels were correctly classified under CTH 90138010 in view of judicial pronouncement in the case of M/s Videocon Industries Ltd. vs CCE, Aurangabad (2009-TIOL-653-CESTAT-Mum-Tribunal), wherein it was held that LCD Panels having multi use in Television and computer monitor are correctly classifiable under CTH 90138010.

The department's reply is not acceptable because the amended notification no. 77/2009 dated 7 July 2009 had brought that 'LCD Panels' for manufacture

of LCD TVs classified under CTH 8529 attract 5 per cent effective rate of duty. Therefore, it implies that the intention of legislation was to classify the LCD Panels under chapter heading 8529 and not under CTH 90138010. The period covered under aforesaid Videocon Industries Ltd., case was August 2006 to April 2008 i.e. prior to amendment of notification. In the instant case the bill of entries specifically mentioned that imported goods were meant for Television.

However, on being issued protective demand notice by the department for differential duty of ₹ 2.58 crore for the period 20 July 2009 to 28 August 2009 (51 consignments, including 18 consignment pointed by audit), the importer had paid ₹ 1.34 crore in March 2010 under protest.

We reported (November 2011) the matter to the Ministry; its response had not been received (January 2012).

4.2 LED display panel

‘LED display panel’ is classifiable under CTH 94056090 as ‘other illuminated signs, illuminated name-plates and the like’ and leviable to BCD at the rate of 10 per cent. Also as per Harmonised system of nomenclature (HSN) notes under chapter heading 9405 ‘illuminated signs, illuminated name plates and the like’ covers advertising signs and the like articles such as advertising plates of any material.



M/s Technology Frontiers (I) Pvt Ltd., had imported (August 2010) through Chennai (Sea), Commissionerate two consignments of ‘LED display panel’ supplied by M/s Shenzhen Mary Photo Electricity Co Ltd., China. The goods were incorrectly classified under CTH 85312000 as ‘Indicator panel’ and exempted from BCD under notification no. 24/2005-cus dated 1 March 2005 (serial no. 19).

Audit noticed that the imported goods were ‘LED panel’ for display and merited classification under CTH 94056090 leviable to BCD at the rate of 10 per cent instead of under CTH 8531 as ‘Indicator Panel’. The incorrect grant of exemption had resulted in short levy of duty of ₹ 83.50 lakh.

When we pointed this out (October 2010), the department while accepting the observation stated (May 2011) that demand notice has been issued to the importer.

We reported (September 2011) the matter to the Ministry; its response had not been received (January 2012).

4.3 Projectors

‘Projectors’ that are solely or principally used in an automatic data processing system are classifiable under CTH 85286100 and exempted from levy of BCD under notification no. 24/2005-cus dated 1 March 2005 (serial no.17). Whereas other projectors are classifiable under CTH 85286900 and assessable to BCD at the rate of 10 per cent.

M/s Redington India, Ltd., M/s Kupidisaatham Narayanaswami Educational Trust and M/s Sharp Business (System) India Ltd., had imported (March to June 2010) five consignments of 'BenQ Projectors', 'Viewsonic Projectors' and 'DLP Projectors' of various models supplied by M/s BENQ Asia Pacific Corporation, M/s Viewsonic International Corporation and M/s Sharp Corporation respectively through Chennai (Sea), Commissionerate and Chennai (Air) Customs Commissionerate. The goods were classified under CTH 85286100 and exempted from BCD under aforesaid notification.



Audit noticed from the products catalogue that the imported models were having RS-232 input, S.Video input and Composite Video input provision and hence could be used with an automatic processing system as well as with Television and Videos. Further, the aspect ratio of the imported goods was 16:9. Accordingly, the imported goods merited classification under CTH 85286900 and assessable to BCD at the rate of 10 per cent in terms of the Board's circular no. 33/2007-cus dated 10 September 2007, wherein it was clarified that the aspect ratio for TV was generally 16:9. Further, similar imports through Chennai Sea and Air Commissionerate during March 2010 were classified under CTH 85286900 and levied BCD at the rate of 10 per cent. Thus, extending the benefit of aforesaid exemption notification had resulted in short levy of duty of ₹ 68.47 lakh.

When we pointed this out in August-November 2010/November 2011, the Ministry/department reported (March/November 2011) recovery of ₹ 29.75 lakh along with interest from M/s Sharp Business System Pvt. Ltd., and issue of less charge notice to M/s Redington India Ltd. Reply in respect of remaining one importer has not been received (January 2012).

4.4 High Speed Diesel (HSD) Oil

'High Speed Diesel (HSD) Oil' classifiable under the CTH 27101930 intended for sale without a brand name will attract concessional CVD at ₹ 2.60 per litre under notification no 4/2006-CE dated 1 March 2006 {serial no. 19 (i)} and High Speed Oil other than those specified at serial no. 19 (i) is liable for concessional CVD at ₹ 3.75 per litre under serial no. 19 (ii) of the same notification.



M/s Van Oord Dredging and M/s Marine Contractors BV India Project, Mumbai imported (March 2010 to May 2010) two consignments of 'Diesel Oil (Marine Gas Oil)' through Cuddalore Port under Trichy Commissionerate. The goods were classified under the CTH 27101930 and levied concessional CVD at the rate of ₹ 3.75 as per serial no.19 (ii) of the notification no. 4/2006-CE dated 1 March 2006.

Audit noticed that since the imported item was not intended for sale, rather it was used on board the vessel as consumables, accordingly ineligible for concessional CVD. It was required to be levied on 'merit rate' at 16 per cent

CVD plus ₹ 5 per litre in addition to other duties. Thus incorrect grant of exemption resulted in short levy of duty to the extent of ₹ 25.05 lakh.

When we pointed this out (November 2011), the Ministry stated (December 2011) that HSD and MGO are same and both are classifiable under Customs tariff heading 27101930 and HSD is used as MGO as per international practice. The Ministry further stated that Diesel Oil found on board was not imported as such and would be charged to customs duty when the vessels were converted from foreign run vessel to Coastal run vessel.

The reply of the Ministry was not acceptable because the imported goods 'Marine Gas Oil' was different from the High Speed Diesel Oil as per the specifications, even though it was classified under CTH 27101930. It was judicially held in the case of M/s Jain Engineering vs Collector of Customs, Bombay reported in 1987 (32) ELT.3 (S.C.) read with Board's circular no.60/195 dated 6 June 1995, that in determination of the appropriate classification for extending the benefit of a notification, the description of the goods shall be the consideration for accommodation in an 'Entry' related to such description in a notification and not the tariff heading shown against it. Hence, the extension of benefit under the aforesaid notification was not applicable to Marine Gas Oil, since it was available only for HSD.