

CHAPTER V MIS-CLASSIFICATION OF GOODS

5.1 During test check (July 2010 to April 2012) of records for the period January 2010 to November 2011, we noticed that assessing officers mis-classified various imported goods which caused short-levy/non-levy of customs duties of ₹ 2.04crore. They are discussed in the following paragraphs.

Assessing officer mis-classified flanges as parts of wind operated electricity generators.

5.2 Note 1 (g) to Section XVI of the Customs Tariff excludes “parts of general use” as defined under note 2 (a) to Section XV. Accordingly, articles of Customs tariff heading (CTH) 7307, 7312, 7315, 7317 or 7318 and similar articles of base metal are not covered under the section. ‘Flanges’ made of steel, are classifiable under CTH 7307 of the Customs tariff and leviable to Basic customs duty (BCD) at the rate of 10 percent .

5.3 M/s Gamesa Wind Turbines Pvt. Ltd., and four others imported (January to May 2010 and April to November 2011) 28 consignments of ‘Flanges’ through Chennai (Sea) Commissionerate. The assessing officer classified imported goods under CTH 85030010/85030090 of the Customs tariff as parts of wind operated electricity generators and levied basic customs duty at the rate of 7.5 percent . ‘Flanges’ fall under the category of ‘parts of general use’, as per the aforesaid provisions and merit classification under CTH 73072100 leviable to BCD at the rate of 10 percent . The incorrect classification led to short levy of duty of ₹ 72 lakh.

5.4 The Deputy of Commissioner of Customs (Sea Port),Chennai did not accept Audit’s contention in respect of observation issued in July 2010 with tax effect of ₹ 53.07 lakh and citing importers’ responses stated (December 2010) that CTH 73072100 covers only articles of general use and not specific use articles such as imported ‘flanges’. The customs authorities further stated that flanges are specifically designed for use in the manufacturing of the windmills and they are an integral part of the towers of windmills. As towers form a part of the windmills, accordingly flanges too are a part of the towers.

5.5 The reply of Commissionerate authorities has to be viewed in the context of the fact that in the case of M/s G.B. Engineering Enterprises Pvt. Ltd., Versus Commissionerate of Central Excise, Trichy {2010 (251) ELT, 298 (Tribunal) Chennai}, the Tribunal held that windmills’ towers are classifiable specifically under CTH 7308 as general articles of iron or steel. On the same analogy, flanges are general use articles specifically covered under CTH 730791.

5.6 Further, contrary to their stand, the Deputy Commissioner of customs, Chennai accepted a similar observation pointed in February 2012 with revenue implication of ₹ 18.93 lakh and reportedly issued show cause notices to the importers. Ministry response was not received (March 2013).

Assessing officer mis-classified Projectors as articles used in automatic data processing system.

5.7 'Projectors' capable of working with an Automatic Data Processing Machine (ADPM) as well as with television and videos are classifiable under CTH 85286900 assessable to BCD at the rate of 10 percent . The Central Board of Excise and Customs in circular no. 33/2007-cus dated 10 September 2007, had issued clarifications incorporating the technical features of the computer monitors and other type of monitors for use with TV/Video in order to distinguish them for the purpose of assessment, which are equally applicable to Projectors also.

5.8 M/s. Epson India Limited and M/s Acer India Ltd., imported (March to July 2011) 11 consignments of 'Projectors' of various models through Chennai (Air) Commissionerate. The assessing officer classified imported goods under CTH 85286100 and assessed BCD at 'nil' rate under Customs notification no.24/2005 (serial no.17) dated 1 March 2005, considering those models as principally used with Automatic Data Processing Machine.

5.9 The technical features of those models available in the website indicated that they could be used with an automatic processing system as well as with Television/Videos meriting classification under tariff item 85286900 and leviable to basic customs duty at 10 percent. The incorrect classification had resulted in short collection of duty of ₹ 54.80 lakh.

5.10 The Deputy Commissioner of Customs (Airport), Chennai confirmed (February/April 2012) a demand of ₹ 14.34 lakh in respect of M/s Acer India Ltd. However, reply in respect of M/s Epson India Limited involving duty of ₹40.46 lakh was awaited (March 2013).

Assessing officer incorrectly classified Animal feed preparations as Fish meal unfit for human consumption.

5.11 'Preparations of a kind used in animal feeding' are classifiable under CTH 2309 and leviable to BCD at the rate of 30 percent and CVD at nil rate. According to explanatory note provided in chapter 23, CTH 2309 includes products of a kind used in animal feeding, not elsewhere specified 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.

5.12 Further, Harmonized system of nomenclature (HSN) note under CTH 2301 provides that this heading covers products obtained by processing either the whole animal or animal products.

5.13 M/s Avanti Feeds Ltd. had imported (February to September 2011) nine consignments of 'Squid Liver Powder' through Chennai (Sea) Commissionerate. The assessing officer classified these goods under CTH 23012090 as 'other fish meal unfit for human consumption' and levied BCD at concessional rate of 5 percent under notification 21/2002 (serial no.53). Audit noticed from the website (<http://milaeml.com/products/>) of the suppliers that "Squid Liver Powder" either consists 50 percent of squid liver paste and well fined soybean

meal 50 percent or pure squid liver paste and 60 percent oil added with soybean meal 40 percent. The imported item being a mixture of soya meal and squid liver paste merited classification under CTH 2309 rather than under CTH 2301 and leviable to BCD at the rate of 30 percent instead of 5 percent levied. The misclassification had resulted in short levy of duty of ₹ 52.53 lakh

5.14 Ministry reported (December 2012) initiation of adjudication proceedings to recover short levy.

Assessing officer mis-classified Food/dietary supplements as medicaments of Ayurvedic system.

5.15 Miscellaneous edible preparations are covered under chapter 21 of the Customs Tariff. Further, food preparation not elsewhere specified or included are to be classified under CTH 2106 and assessable to BCD at the rate of 30 percent and CVD at the rate of 10 percent of RSP after allowing abatement of 35 percent. As per note 1 (a) of chapter 30, the chapter does not cover food supplements. Further, dietary/food supplement is a preparation intended to supplement the diet and provide nutrients.

5.16 M/s Daxen Agritech (India) Pvt. Ltd. imported 1200 Kilogram of 'Reishi Gano Powder' and 2000 Kilogram of 'Ganocelium Powder' through ICD, Tughlakabad, New Delhi. The assessing officer incorrectly classified imported goods under CTH 30039011 as 'Medicaments of Ayurvedic system' and levied BCD/ CVD at the rate of 5/10 percent respectively. The imported items were actually food/dietary supplements which merit classification under CTH 21069099 as 'other food preparation not elsewhere specified', attracting BCD/ CVD at the rate of 30/10 percent respectively. Thus, misclassification of imported goods caused short levy of duty by ₹ 24.49 lakh.

5.17 Ministry reported (February 2013) that demand notice has been issued for recovery.

New Delhi
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Countersigned

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