

CHAPTER V MIS-CLASSIFICATION OF GOODS

This Chapter describes cases wherein assessing officers allowed imports of various goods that were misclassified. During test check of records (March 2014 to March 2016), Audit noticed 21 cases of short levy/non levy of Customs duties of ₹ 6.12 crore due to misclassification of imported goods. Out of these seven cases are discussed in the following paragraphs and 14 cases which have been accepted by the department and recoveries are made/recovery proceeding initiated are mentioned in **Annexure 7**.

5.1 Short levy of duty due to misclassification of Palmester 3595 -Medium chain triglycerides (MCT) imports

Palmester 3595/Palmester 3585 also known as MCT Oil consist of medium chain triglycerides including caprylic/capric triglycerides that are re-esterified fatty acid triglycerides derived from Palm oil and Palm kernel oil. As per the Harmonized System of Nomenclature (HSN) explanatory notes vegetable fats and oils and their fractions wholly or partly re-esterified, whether or not refined, but not further prepared are classifiable under CTH 151620 and leviable to BCD (BCD) at the rate of 80 percent (notification no.12/2012-cus dated 12 March 2012, serial no.68).

M/s K.P. Manish Global Ingredients Private Limited imported (November 2015 to March 2016) six consignments of “Palmester 3595 – acrylic/capric triglycerides” through Chennai (Sea) Customs. The goods were incorrectly classified under CTH 38249090 as ‘Other chemical products and preparations of Chemical or allied Industries including those consisting of mixture of natural products’ and exempted from BCD under serial no.449 (1) of notification no.46/2011-cus dated 1 June 2011.

Audit observed that the products are correctly classifiable under CTH 15162099 in terms of aforesaid HSN explanatory notes and also as supported by U.S. Customs Rulings Online Search System (CROSS) ruling number N252004 and accordingly leviable to BCD at 80 percent. Thus, misclassification and incorrect extension of notification benefit had resulted in short levy of duty of ₹ 1.94 crore.

This was pointed out to the department in April 2016, their reply is awaited (September 2017).

5.2 Short levy of duty due to misclassification of Pepper seeds imports

Chilly seeds of genus capsicum are classifiable under CTH 09042212 and attract BCD at the rate of 70 percent.

M/s Royal Seeds Corporation and six others imported (July to November 2016) 21 consignments of 'Pepper seeds of the genus capsicum' through NCH, New Delhi. The goods were classified under CTH 12099190 – Other vegetable seeds and assessed to BCD at the rate of five percent.

Audit noticed that pepper seeds of the genus capsicum are chilly seeds and merit classification under CTH 09042212 as chilly seeds of the genus capsicum and leviable to BCD at the BCD rate of 70 percent instead of five percent levied. The misclassification resulted in short levy of duty of ₹ 90.76 lakh.

On this being pointed out (December 2016/March 2017), the department intimated (March 2017) that demand cum show cause notices have been issued to the importers. Further progress is awaited (September 2017).

5.3 Short levy of duty due to misclassification of 'mobile concrete mixer' imports

CTH 8705 covers a range of Motor Vehicle specifically constructed or adapted, equipped with various devices that enable them to perform certain non-transport function. As per the Harmonised System of Nomenclature (HSN) notes given under CTH 8474, Concrete mixer when permanently mounted on a railway wagon or on a lorry chassis are excluded from CTH 8474 and are to be classified under CTH 8604 or 8705 respectively. Further, serial no.10 of the HSN notes for CTH 8705 clearly specifies that Concrete mixer Lorries consisting of a cab and a motor vehicle chassis, on which is permanently mounted a concrete mixer capable of use for making and transporting concrete falls under CTH 8705. Accordingly, concrete mixer lorries are classified under CTH 87054000 and Parts and accessories of the motor vehicles of CTH 8701 to 8705 are classifiable under CTH 8708 and leviable to BCD at the rate of 10 percent.

M/s Ajax Fiori Engineering (India) Private Limited imported (between September 2014 and January 2015) components of mobile concrete mixer like 'Steering Axle, Steering Axle with Gear Box, Dana Axle with Gear Box, Valve for negative brake, hand brake etc' through Chennai (Sea) Customs,. The goods were classified under CTH 84836090/84818090 as 'Clutches and shaft couplings' and assessed to BCD (BCD) at the rate of 7.5 percent instead of applicable rate of 10 percent. The incorrect classification had resulted in short collection of duty of ₹ 51.48 lakh.

On this being pointed out (March 2015/October 2016), the department reported (February 2017) that the importer has filed an appeal before the CESTAT, Chennai against the order in Original confirming short levy of ₹ 51.48 lakh. Accordingly, recovery proceedings could be initiated only after the outcome of appeal is known. Further progress is awaited (September 2017).

5.4 Short levy of duty due to misclassification of seaweed extract imports

As per Harmonized System of Nomenclature (HSN), explanatory notes under chapter heading 3808 'Plant growth regulators' are applied to alter the life process of a plant so as to accelerate or retard growth, enhance yield, improve quality or facilitate harvesting etc. and are classifiable under CTH 38089340. 'Seaweed extract liquid' and 'synthetic organic chemicals' used as plant growth regulators are, therefore, classifiable under CTH 38089340 and attract BCD at the rate of 10 percent and CVD at the rate of 12.5 percent.

M/s Mangalore Chemicals and Fertilizers Limited imported (October to December 2016) three consignments of 'Kelpak seaweed extract' from South Africa through JNCH, Nhava Sheva, Mumbai. The department incorrectly classified imported goods under CTH 31010099 as 'Animal and vegetable fertilizers'/Other fertilizers/Organic chemicals' and levied BCD at the rate of 7.5 percent and exempted from CVD instead of levying BCD at a rate of 10 percent and CVD at 12.5 percent. 'Kelpak seaweed extract' is a natural seaweed for accelerating root development and improving plant health and used as plant growth promoter for all kinds of plants. Therefore, these merit classification under CTH 38089340 and attract BCD at 10 percent. The misclassification resulted in short levy of duty of ₹ 43.81 lakh.

On this being pointed out (April 2017), department stated (May 2017) that a show cause notice has been issued to the importer. Further progress is awaited (September 2017).

5.5 Short levy of duty due to misclassification of 'Rubber band/Hair Rubber band' imports

Rubber band is classifiable under CTH 40169920 as other articles of vulcanized rubber other than hard rubber and attracts CVD at the rate of 12.5 percent.

M/s Mera Baba International and 65 others imported (January 2016 to January) 302 consignments of 'Rubber band/Hair Rubber band' through ICD, Tughlakabad, New Delhi. The imported goods were classified under CTH 96159000 as 'Other' combs, hair slides and the like hair pins, curling pins, curling grips, hair curlers and cleared after levying CVD at 'nil' rate.

Audit noticed that imported goods were declared as rubber bands and hence classifiable under CTH 40169920 as 'rubber band' attracting CVD at the rate 12.5 percent. The misclassification resulted in short levy of duty amounting to ₹ 32.75 lakh.

On this being pointed out (January/February/March 2017), the department reported (April 2017) that two importers (M/s Atlantic sales and M/s United

sales) deposited ₹ 0.18 lakh along with interest in respect of three consignments. Reply in respect of remaining consignments is awaited (September 2017).

5.6 Short levy of duty due to misclassification of tea filter paper imports

Filter paper and paperboard are classifiable under CTH 48232000 and attract CVD at the rate of 12.5 percent.

M/s Hindustan Unilever Limited imported (May to November 2016) six consignments of 'Dynapore tea filter paper of width 94 mm' through ICD, Tughlakabad, New Delhi. The imported goods were classified under CTH 48054000 as filter paper and paperboard and assessed to CVD at the rate of six percent.

Audit noticed that as per note 8 to chapter 48, CTH 4805 includes papers in strips or rolls having width exceeding 3 cm. As the width of imported filter paper is 94 mm it merit classification under CTH 4823000 as filter paper and paperboard and attract CVD at the rate of 12.5 percent instead of at the rate of six percent levied. Thus misclassification resulted in short levy of duty of ₹ 19.26 lakh.

On this being pointed out (December 2016/March 2017), department stated (February 2017) that a demand notice has been issued to the importer. Further progress is awaited (September 2017).

5.7 Short levy of duty due to misclassification of 'Chromo Paper 80 GSM' imports

'Chromo Paper 80 GSM' is classifiable under CTH 48119012 as chromo and art paper, coated and leviable to CVD at the rate of 12.5 percent.

Commissioner of Customs, JNCH, Maharashtra in his order-in-original dated October 2015 in similar imports held "Chromo Paper 80 GSM" classification under CTH 48119012 leviable to CVD at the rate of 12.5 percent beside other duties.

M/s Mudrika Lables Private Limited and four others imported (February 2013 to February 2016) 36 consignments of 'Chromo Paper GSM 80' through JNCH, Nhava Sheva, Mumbai. The imported goods were mis-classified under CTH 48101330/48101390/48103200/48101990 as 'Chrome paper or paper board'/'Other paper'/'bleached paper and cleared after levying CVD at six percent instead of the applicable rate of 12.5 percent.

The misclassification resulted in short levy of duty of ₹ 14.40 lakh which is recoverable.

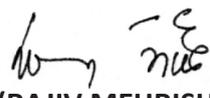
The matter was communicated to the department in March/April 2017, their reply is awaited (September 2017).

New Delhi
Dated: 21 November 2017


(SHEFALI S. ANDALEEB)
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Countersigned

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Dated: 22 November 2017


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