

CHAPTER VI

MIS-CLASSIFICATION OF GOODS

During test check of records (March 2014 to March 2016), we noticed 28 cases wherein assessing officers mis-classified various imported goods which caused short levy/non levy of customs duties of ₹ 10.01 crore. Out of these 10 cases are discussed in the following paragraphs and 18 cases which have been accepted by the department and recoveries are made/recovery proceeding initiated are mentioned in **Annexure 10**.

6.1 Hydrolysed vegetable protein containing – Soya misclassified as Isolated soya protein

“Hydrolysed vegetable protein containing – Soya” merit classification under Customs tariff heading (CTH) 21061000.

M/s Cadbury India Limited imported (July 2012 to March 2014) 19 consignments of “Hydrolysed vegetable protein containing – Soya” through JNCH, Mumbai. The goods were classified under CTH 35040091 as “Isolated soya protein” and cleared levying Basic customs duty (BCD) at the rate of 10 per cent and countervailing duty (CVD) at the rate 6 per cent instead of applicable BCD at 30 per cent and CVD at 10 per cent. The misclassification resulted in short levy of duty to tune of ₹ 2.80 crore.

On this being pointed out (March 2014/March 2016), the department reported (October 2016) that for 15 consignments less charge cum demand show cause notice has been issued (January 2015) to the importer and is under process of adjudication. Further progress is awaited (December 2016).

6.2 Vegetable oil (other than refined and edible grade) misclassified as edible grade and refined

As per the notification no.12/2012-cus (serial no.58) import of ‘Vegetable oil’ (Other than refined and edible grade) classifiable under Customs tariff heading (CTH) 1509/1515 are not eligible for concessional rate of BCD and leviable to countervailing duty at the rate of 6 per cent.

M/s Pioma Chemicals had imported (September 2015) four consignments of ‘different vegetable oils for industrial use’ from Germany through JNCH, Nhava Sheva, Mumbai. The imported goods were misclassified as edible grade and refined vegetable oil and cleared levying BCD at concessional rate and ‘CVD at nil’ rate under aforesaid notification. The misclassification of imported goods under edible grade and incorrect availment of exemption led to short levy of duty amounting to ₹ 85.73 lakh.

On this being pointed out (November 2015), the department accepted the audit observation and issued (March 2016) a show cause notice to the

importer in respect of one consignment for ₹ 34.77. Further progress is awaited (December 2016).

6.3 Seeds of herbaceous plant principally cultivated for flowers misclassified as “Other Seeds”

According to Customs Tariff, Seeds of herbaceous plants cultivated principally for their flowers are classifiable under Customs tariff heading (CTH) 12093000 and attracts BCD at the rate of 15 per cent.

M/s Rashi Seeds Pvt. Limited and others imported ‘Flower seeds of various herbaceous plants for sowing’ through New Custom House, Delhi. The items were classified under CTH 12099990 (Other Seeds) and assessed to BCD at concessional rate of 5 per cent (serial no.41 of notification no.12/2012-cus dated 17 March 2012).

As the imported items are seeds of herbaceous plants for sowing, cultivated principally for flowers purpose, they are appropriately classifiable under CTH 12093000 and assessable to BCD at the rate of 15 per cent (serial no.40 of notification no.12/2012-cus dated 17 March 2012). Thus misclassification of the imported item resulted in short levy of duty amounting to ₹ 72.11 lakh.

On this being pointed out (October 2015), the department stated (May 2016) that as per clarification received from an importer, Marigold seed has been classified under flower category as per Indian Minimum Seed Certification Standards 2013 and not as seeds of herbaceous plants {(in response to RTI clarification which was issued by the Ministry of Agriculture and Farmers Welfare (Department of Agriculture, Cooperation and Farmers Welfare Krishi Bhawan, new Delhi)}. As such the seeds of marigold flower are appropriately classifiable under CTH 12099990. However, department had issued (December 2015) the protective demand cum show cause notice.

The reply of the department is not tenable because the Indian Minimum Seeds Certification Standards are meant to maintain and make available to the public, through certification, high quality seeds and propagating materials of notified kinds and varieties so grown and distributed as to ensure genetic identity and purity and not for customs classification.

Moreover, department had classified the import of Marigold seeds under residual CTH 12099990 as ‘Other seeds’ instead of under CTH 12093000, which is specifically meant for seeds of herbaceous plants cultivated principally for their flowers. As per Rule 3 (a) of the General Rules for the interpretation of import tariff – the heading which provides the most specific description shall be preferred to headings providing a more general description.

Further, similar imports of “Flower seeds Marigold for sowing” through Kolkata Air Cargo/Chennai Air Cargo /Delhi Air Cargo were classified by the department under CTH 12093000.

6.4 Food dietary supplements misclassified as ‘Other vegetable saps and extracts’

“DHA Powder” being food/dietary supplements is classifiable under Customs tariff heading (CTH) 21069099 as ‘Other food preparations not elsewhere specified or included’ and leviable to basic customs duty at the rate of 30 per cent (notification no.21/2002-cus dated 1 March 2002, serial no.47).

M/s Vasta Biotech Pvt. Limited imported (April and November 2011) 15 consignments of “DHA powder” through Air Customs Chennai. The goods were classified under CTH 13021990 as ‘Other vegetable saps and extracts’ and assessed to basic customs duty at the rate of 15 per cent (notification no.21/2002-cus, serial no.28) instead of applicable BCD at the rate of 30 per cent. The incorrect classification had resulted in short levy of duty of ₹ 64.76 lakh.

On this being pointed out (March 2012), the department stated (August 2016) that the case is under the process of adjudication by Principal Commissioner and the outcome would be intimated after adjudication. Further progress is awaited (December 2016).

6.5 Copper wire misclassified as copper bar/rods

As per note 1 (d) & (f) of Chapter 74, Bars and rods are defined as Rolled extruded, drawn or forged products not in coils. While wire is defined as Rolled extruded, drawn products in coils. Further, as per Bureau of Indian Standard (BIS) wire rod means rod products of uniform cross section dimension exceeding 6 mm used as intermediate product for further working supplied in cold form. Copper wire having cross sectional dimension exceeding 6 mm is classifiable under Customs tariff heading (CTH) 74081190 and attract Basic customs duty (BCD) at the rate of 5 per cent.

M/s Ashok Company imported (August to December 2015) “Copper wire rod” through ICD, Tuglakabad, Delhi. The imported goods were classified under CTH 74072990 as “Others” bars, rods and profiles of copper alloys” and exempted from BCD under notification no.46/2011-cus serial no.979. Although Imported goods were copper wire rod in coils which merit classification under CTH 74081190 as copper wire and leviable to BCD at the rate of 5 per cent. The misclassification and subsequent incorrect grant of notification benefit resulted in short levy of duty amounting to ₹ 55.70 lakh.

This was pointed to the department in January 2016, their reply is awaited (December 2016).

6.6 Dried grapes misclassified as dried fruit other than grapes

Dried grapes-Raisins are classifiable under Customs tariff heading (CTH) 08062010 and attract Basic customs duty (BCD) at the rate of 100 per cent as per the notification no.12/2012-cus dated 17 March 2012 (serial no.28) and other applicable cess and duty.

M/s Kanegrade Flavours and Ingredients Pvt. Limited imported (January 2014/December 2015) two consignments of 'Midget Currants' through JNCH, Nhava Sheva, Mumbai. The imported goods were classified under CTH 08134090 as dried fruit other than that of heading 0801 to 0806 and levied BCD at the rate of 30 per cent and were exempted from SAD (notification no.21/2012-cus, serial no.20 dated 17 March 2012).

Audit scrutiny revealed that imported goods were small dried black grapes referred to as "Midget Currants" produced in Greece and accordingly merited classification under CTH 08062010 and leviable to BCD at the rate of 100 per cent. Further, these goods were not eligible for SAD exemption being dried fruits instead of fresh fruits. Thus, improper classification and incorrect SAD exemption resulted in short levy of ₹ 29.72 lakh.

On this being pointed out (February 2016), the department while not accepting the observation stated (March 2016) that 'Midget Currants' are made from drying black currants and not from grapes. The department, without furnishing any evidence further stated that the black currant is woody shrub grown for its piquant berries and the imported items have been rightly classified under CTH 08134090. However, a show cause notice has been issued to the importer.

Reply of the department is not acceptable because "Currant" refers to raisins made by drying grapes and the word 'Midget' is used to denote the small size of the "Currant" and therefore the imported items are classifiable under the CTH 08062010. Response from the Department of Revenue is awaited (December 2016).

6.7 Plant growth regulators misclassified as Animal and Vegetable fertilizers

As per the explanatory notes under Chapter Heading 3808 of the Harmonized System of Nomenclature (HSN), 'Plant Growth Regulators' are applicable 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 to be classified under Customs tariff heading (CTH) 38089340. Further, in terms of Rule 3 (a) of the

'Rules for the interpretation of the Schedule to Customs Tariff Act', the heading which provides the most specific description shall be preferred to the headings providing a more general description. Seaweed Extract Liquid/Amino Acid granules/Humic Acid granules and synthetic organic chemicals used as plant growth regulators are, therefore, classifiable under CTH 38089340 attract Basic customs duty (BCD) at the rate of 10 per cent, additional duties of customs equivalent to excise duty at 12/12.5 per cent.

M/s Mark International and four others imported (November 2014 to September 2015) 14 consignments of 'Seaweed Extract Liquid/Amino Acid granules/Humic Acid granules' through Sea, Customs, Chennai. These imported goods were incorrectly classified under CTH 31010099/31059090/29225090/29379090/38249090 as 'Animal and Vegetable fertilizers'/Other fertilizers/Organic Chemicals and assessed to BCD at the rate of 5/5.75 per cent and additional duties of customs at nil/1/12 per cent. The misclassification resulted in short levy of duty of ₹ 28.87 lakh.

This was pointed out to the department in November 2015, their reply is awaited (December 2016).

6.8 Machines for processing areca nut misclassified as machines for cleaning sorting or grading seed

According to Customs tariff, machines for mixing kneading, crushing, grinding, screening, shifting etc not specified or included elsewhere in chapter 84 are classifiable under Customs tariff heading (CTH) 84798200 and attracts CVD at the rate of 12.5 per cent.

M/s Dharampal Satyapal Limited imported (July 2015) a consignment of 'Crumbler DFZL-1500 (size reducer crusher) machine' along with accessories, 'Plansifter MPAK-228 (for sifting and grading)' and 'Discharge airlock MPSJ-22/22' through ICD, Tughlakabad. The imported goods were classified under CTH 84371000 as Machines for cleaning, sorting or grading seed, grain or dried leguminous vegetables and exempted from CVD duty. Audit examination revealed that machines are specifically for Areca nut plant, mainly used for crumbling or processing areca nuts (commonly known as supari) for production of Pan masala etc. Hence, imported goods should have been classified under CTH 84798200 attracting CVD at the rate of 12.5 per cent. This resulted in short levy of duty amounting to ₹ 27.74 lakh.

This was pointed out to the department in January 2016, their response is awaited (December 2016).

6.9 Brush cutters/Reapers misclassified as Agriculture / Horticulture / Harvesting Machinery

'Brush Cutters/Reapers', being portable machines having self contained internal combustion engine mounted on a light metal frame and equipped with cutting devices are classifiable under the Customs tariff heading (CTH) 84672900 in view of their exclusion from CTH 8433 as per the explanatory notes to harmonized system of Nomenclature (HSN). The subject goods are leviable to CVD at the rate of 12 per cent (till 28 February 2015) and 12.5 per cent (w.e.f 1 March 2015).

M/s Vinod Kumar Virender Kumar imported (December 2014 to September 2015) six consignments of 'Brush cutters/Reapers of various models' through ICD, Tughlakabad. The goods were classified under various CTH 8424/8432/8433 considering them as 'Agriculture / Horticulture / Harvesting' machinery and exempted from CVD instead of applicable rate of 12.5 per cent. The imported goods being grass cutting machinery merit classification under CTH 8467 in view of the aforesaid HSN explanatory notes. The misclassification had resulted in short levy of duty of ₹ 18.40 lakh.

This was brought to the notice to the department in May and November 2015, their response is awaited (December 2016).

6.10 Articles of wood misclassified as 'wooden sticks' for manufacture of walking sticks

'Articles of wood' classifiable under Customs tariff heading (CTH) 4421 and attract CVD at the rate of 12/12.5 per cent.

M/s Shree Sai Overseas imported (July 2014 to March 2016) six consignments of 'Wooden sticks (size 74mm to 114mm)' through ICD, Tughlakabad, Delhi. The imported goods were classified 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 from CVD under notification no.12/2012-CE dated 17 March 2012. The imported Wooden sticks being very small in size (75mm to 114mm) were unsuitable for manufacturing of walking stick, therefore are classifiable under CTH 44219090 – 'Other articles of wood' and leviable to CVD at the rate of 12/12.5 per cent. Thus, misclassification resulted in short levy of duty of ₹ 11.77 lakh.

This was pointed to the department in September 2014/December 2015 and March 2016, their reply is awaited (December 2016).