

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

Customs Tax Appeal No. 60915 of 2025

[Arising out of Order-in-Appeal No. LUD-EXCUS-001-APP-87-2025 dated 06.03.2025 passed by the Commissioner (Appeals), CGST, Ludhiana]

Commissioner of Customs, Ludhiana

Customs House, ICD-GRFL Complex,
G.T Road, Sahnewal, Ludhiana,
Punjab-141120

.....Appellant

VERSUS

M/s Goyal Brothers

Shop No.14, Central Market,
Gill Road, Ludhiana, Punjab-141003

.....Respondent

APPEARANCE:

Shri Aniram Meena, Authorized Representative for the Appellant

Shri Sudhir Malhotra, Advocate for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)

HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO.60927/2025

DATE OF HEARING: 22.07.2025

DATE OF DECISION: 05.08.2025

P. ANJANI KUMAR:

The present Appeal No. C/60915/2025 has been filed by the Commissioner of Customs, Ludhiana against the Order-in-Appeal, dated 06.03.2025, passed by the Commissioner (Appeals), CGST, Ludhiana

2. Brief facts of the case are that the respondents, M/s Goyal Brothers, imported items declared as Festival items (Ballon used in Holi) in packs, declaring the classification under CTH 9505 9090 and Trolley bags in sets and pieces, declaring the classification under CTH 4202 1220. They filed two Bills of Entry. Quantity of items declared and quantity found on examination are as follows.

Sl. No.	Bill of Entry No. & date	Item	As per Bill of entry	Actual
1.	6622616/ 11.11.2024	Ballons (Pack of 3)	75800	75800
		Ballons (Pack of 1)	60000	60000
2.	6715468 dt.16.11.2024	Ballons (Pack of 3)	60200	52000
		Trolley Bags (set of 2)16"& 20"	500 Sets	0
		Trolley Bags (18")	500 pcs	0
		Trolley Bags (16")	0	550 pcs.

2.1. It was seen that the items imported vide Bill of Entry No 6622616 dated 11.11.2024 were as per declaration. It was found with respect to the Bill of Entry No 6715468 dated 16.11.2024, that the number of balloons were 52,000 packs as against the declared 60,200 packs; only 550 pieces (16") trolley bags were found as against declared number of 1,000 pieces i.e. 500 sets (2 PCs of size 16" & 20") plus 500 pieces (size 18"). Original Authority, vide order-in-original dated 05.02.2025, held that trolley bags are not liable to confiscation and penalty; "toy balloons" are liable to be confiscated; balloons imported are correctly classifiable under CTH 9503 0020 as against CTH 9505 9090 claimed by the respondents; the value of Toy

Balloons needs to be re-determined at Rs 33,40,172; the value of 550 pcs of "trolley bags 16" needs to be redetermined at Rs. 3,03,266; differential customs duty of Rs 1,13,634 is recoverable; penalty of Rs 15 lakh is imposable under section 112 (a) (i) of Customs Act, 1962. On an appeal filed by the respondent, learned Commissioner (Appeals), vide order dated 06.03.2025, set aside the order-in-original and allowed the appeal. Hence, the instant appeal by revenue.

3. Shri Aniram Meena, Learned Authorized Representative, reiterates the Grounds of Appeal and submits that the impugned order was passed despite ample evidence showing mis-declaration, undervaluation with intent to evade payment of duty; violation of the provisions of Exim policy.

4. Shri Sudhir Malhotra, Learned Counsel for the appellants, on the other hand supports the impugned order. He takes us through the provisions of Customs Tariff Act and HSN Notes as far as Headings 9505 9090 and 9503 0020 are concerned and submits that the Balloons declared as "Festival items (Balloons used in Holi)" in the above said Bills of Entry were found attached with a set of pipe mechanism (made of plastics) & Automatic Tie (rubber) with Multi Coloured Water Balloons, made of Latex and Plastic; the impugned ballons satisfy the description given under HSN under Festive, carnival or other entertainment articles. He submits that the articles for Christmas festivities are specifically classifiable under heading

9505 10 00; accordingly, articles for Holi are classifiable under heading 9505 90 90 as per Rule 3 (a) of General Rules of Interpretation which says that specific description has to be preferred to heading providing a more general description. He relies on the decision of Hon'ble Supreme Court in the case of Speedways Rubber Co 2002 (143) ELT 8 (SC); He submits that as per the correct classification, BIS standards are not applicable.

5. Learned Counsel submits that the value arrived by the Revenue for the impugned goods is without any basis. No reasons for rejection of the transaction value were given; No representative of the importer-respondent was there during the said market enquiry; contrary to the valuation Rules, highest, instead of the lowest of the available prices, were taken; deduction only for Customs duty was allowed from the referenced price; deduction of other post importation charges viz. loading, unloading, transportation, margin of profit etc. was not allowed. He submits that as there is no mis-declaration or undervaluation, confiscation under Sections 111 (l) & (m); imposition of fine under Section 125 of Customs Act, 1962; imposition of Penalties under Sections 112(a)(i), 112 (a)(ii), 114A are not warranted. Moreover, the original authority held that there is no mis-declaration and to that the original order has not been challenged by the Revenue before Commissioner (Appeals).

6. Heard both sides and perused the records of the case. Brief issues involved in the case are as to whether the appellants mis-declared

quantity and value of imported goods and as to whether the classification and value arrived at by the Revenue are correct and if so, the revenue appeal is maintainable.

7. Coming to the classification we find that the competing entries are 9503 0020 as against 9505 9090 under CTH. The appellants claimed classification under CTH 9505 9090 whereas the Revenue would like to classify under CTH 9503 0020. We find that the competing entries under CTH and HSN are as follows.

7.1. The heading 9503 of Customs Tariff Act is as under: -

Tariff Item		Description of goods
1	2.	3.
9503		TRICYCLES, SCOOTERS, PEDAL CARS AND SIMILAR WHEELED TOYS; DOLLS' CARRIAGES; DOLLS; OTHER TOYS; REDUCED-SIZE ("SCALE") MODELS AND SIMILAR RECREATIONAL MODELS, WORKING OR NOT; PUZZLES OF ALL KINDS.
9503 00	-	Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls; other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds.
9503 00 10	- - -	Electronic
9503 0020	- - -	Non Electronic
	- - -	Parts
9503 0091	- - - -	Of Electronic toys
9503 0099	- - - -	Other

7.2. The heading 9505 of Customs Tariff Act is as under: -

Tariff Item		Description of goods
1	2.	3.
9505		FESTIVE, CARNIVAL OR OTHER ENTERTAINMENT ARTICLES, INCLUDING CONJURING TRICKS AND NOVELTY JOKES
9505 10 00	-	Articles for Christmas festivities
9505 90	-	Other
9505 90 10	- - -	Magical equipment
9505 90 90	- - -	Other

7.3. The heading 9503 under Explanatory Notes to HSN is as under: -

This heading covers:

(A) to (C)

(D) Other toys.

This group covers toys intended essentially for the amusement of persons (children or adults). However, toys which, on account of their design, shape or constituent material, are identifiable as intended exclusively for animals, e.g., pets, do not fall in this heading, but are classified in their own appropriate heading. This group includes:

All toys not included in (A) to (C). Many of the toys are mechanically or electrically operated.

These include:

(i) Toys representing animals or non-human creatures even if possessing predominantly human physical characteristics (e.g., angels, robots, devils, monsters), including those for use in marionette shows.

(ii) Toy pistols and guns.

- (iii) Constructional toys (construction sets, building blocks, etc.).*
- (iv) Toy vehicles (other than those of group A), trains (whether or not electric), aircraft, boats, etc., and their accessories (e.g., railway tracks, signals).*
- (v) Toys designed to be ridden by children but not mounted on wheels, e.g., rocking horses.*
- (vi) Non-electric toy motors, toy steam engines, etc.*
- (vii) Toy balloons and toy kites.*
- (viii) Tin soldiers and the like, and toy armaments.*
- (ix) Toy sports equipment, whether or not in sets (e.g. golf sets, tennis sets, archery sets, billiard sets; baseball bats, cricket bats, hockey sticks).*
- (x) Toy tools and implements; children's wheelbarrows.*
- (xi) Toy cinematographs, magic lanterns, etc.; toy spectacles.*
- (xii) Toy musical instruments (pianos, trumpets, drums, gramophones, mouth organs, accordions, xylophones, musical boxes, etc.).*
- (xiii) Dolls' houses and furniture, including bedding.*
- (xiv) Toy tableware and other toy household articles; toy shops and the like, farmyard sets, etc.*
- (xv) Toy counting frames (abaci).*
- (xvi) Toy sewing machines.*
- (xvii) Toy clocks and watches.*
- (xviii) Educational toys (e.g., toy chemistry, printing, sewing and knitting sets).*
- (xix) Hoops, skipping ropes (other than those of heading 95.06),. diabolo spools and sticks, spinning and humming tops, balls (other than balls of heading 95.04 or 95.06).*
- (xx) Books or sheets consisting essentially of pictures, toys or models, for cutting out and assembly; also books containing "stand-up" or movable figures have the essential character of toys (see the Explanatory Note to heading 49.03)*

(xxi) Toy marbles (e.g., veined glass marbles put up in any form, or glass balls of any kind put up in packets for the amusement of children).

(xxii) Toy money boxes; babies' rattles, jack-in-the-boxes; toy theatres with or without figures, etc.

(xxiii) Play tents for use by children indoors or outdoors.

Certain of the above articles (toy arms, tools, gardening sets, tin soldiers, etc.) are often put up in sets.

Certain toys (e.g., electric irons, sewing machines, musical instruments, etc.) may be capable of a limited "use"; but they are generally distinguishable by their size and limited capacity from real sewing machines, etc.

7.4. The heading 9505 under Explanatory Notes to HSN is as under: -

This heading covers:

*(A) **Festive, carnival or other entertainment articles**, which in view of their intended use are generally made of non-durable material.....*

7.5. A perusal of the above shows that the impugned articles being for a festive non-repetitive use do fall aptly under the CTH 9505. We find that there is no reason as to why one should take a constrictive use of the word Christmas in the HSN Notes. It could mean any festival. It is not the case of the department that Holi is not a festival and the impugned goods are not used during Holi for spraying Coloured water. We are of the considered opinion that the heading 9505 includes festive or other entertainment articles made out of non-durable material and the impugned goods are for entertainment in the festival of Holi and are made up of non-durable material. These

balloons are fragile and non-durable and are intended to break on impact. They cannot be called Toys or Toy balloons, as explained under HSN notes for CTH 9503. Further going by the General Rules of Interpretation of Tariff, the impugned goods are classifiable under CTH 9505 being specifically described under that head and occurring last in the available alternatives. Thus, we find that Learned Commissioner (Appeals) has correctly arrived at the classification.

8. We find that the Commissioner (Appeals) held as under:

5.8. *On examining the heading 9505 its sub-heading and corresponding explanatory notes of HSN, I find that the heading 9505 specifically covers items including other entertainment articles used in festivals which in view of their intended use are generally made of non-durable material. The festive items mentioned in the Heading 9505 does not restrict it to the items for Christmas only, there are many festivals celebrated in this part of the world. It is not disputed that Holi is an important festival in this part of the world and that the water balloons have been traditionally associated with Holi and used by children and adult alike as an essential item of entertainment during celebration of Holi . Moreover, the material of which the water balloons are made is such that these balloons are fragile and non-durable and are intended to break on impact. Water Balloons are rather a single use item unlike toys that are durable in nature. A single use item cannot be considered as Toys. Hence, I am of the view that the items impugned goods i.e. 'Balloons for Holi' which are single use item and intended for Holi celebrations only and that too of non-durable material have been rightly classified under CTH 95059090 and cannot be termed as Toys falling under CTH 95030020.*

5.9. *I find that, the ITC (HS) based import policy by DGFT for Chapter 95, as quoted in para 13.3 of the impugned order, mentions import of only Toys (all items under 95030010, 95030020, 95030030 and 95030090) and not balloons of any kind. Balloons may be of many kinds, other than toys also which may be outside the purview of BIS specifications. Since these are meant for a particular festival, same can be considered under CTH 950590 i.e. 'other than Articles for Christmas festivities', as these are made of non-durable material and are associated with particular festival. Thus, as the impugned goods namely Balloon used in Holi are not Toys, the issue of BIS also does not sustain*

5.10. *Now, I come to the second issue regarding valuation and market enquiry. The appellant in the grounds of appeal and in the additional submissions dated 27.02.2025 averred that, market enquiry has been conducted in absence of appellant or their representative, it also does not bear the signature of Customs Officer who conducted the market enquiry; that M/s New Payal Gift House does not deal in impugned goods as per their letterhead; that, there is no reference whether samples were shown to M/s Gully Toys; that, description of product found during physical examination is different than that mentioned in impugned enquiry; that the parties from whom market enquires were conducted have not disclosed whether they are dealing in impugned goods or not. Further, they pleaded that without prejudice to above, the department has taken average unit price of balloons Rs.42/- pack of three; that Rule 4 & 5 of the CVR, 2007 stipulates that if there are more than one transaction value of identical or similar goods the lowest of such value shall be used to determine the*

value of imported goods i.e. Rs.36/-; that assessable value has been arrived by excluding element of duty only. Section 14 of the Act stipulates the value for assessment is the price at the time and place of importation. The market value is required to be abated by post importation charges viz. loading, unloading, transportation, margin of profit etc; that, the appellant was pressurized to give consent on market enquiry so that their bill of entry could be assessed at the earliest and goods be released. Since, the Holi festival is from 10.03.2025 to 15.03.2025, the appellant under compelling circumstances wrote the letter as per dictation of department.

5.11. *I find that the appellant has correctly requested to accept the declared value. It is also strange that there is nothing on record whether the appellant or his representative accompanied the Customs team that went for market inquiry. It is also not on record as to whether goods found with the market traders, with whom the comparison of impugned goods is made in respect of value, were balloons falling under CTH 9505 or 9503. This view acquires importance since as per the respondent, goods under consideration were Toy balloons under the purview of BIS registration and not those meant for festival use and classifiable under CTH 9505.*

9. Coming to the issue of valuation, we find that mis-declaration of goods or quantity has not been proved. Revenue has not adduced any reasons to reject the value under Rule 12 of the Customs Valuation Rules. Apart from rejecting the declared value, though for no valid reasons, Revenue did not proceed sequentially the Rules of Valuation. It is not on Record if the market survey was done referring

to similar or identical goods. We find that No representative of the importer-respondent was present during the said market enquiry; contrary to the valuation Rules, highest, instead of the lowest of the available prices, were taken; deduction from the referenced price was allowed only for Customs duty and not of other post importation charges viz. loading, unloading, transportation, margin of profit etc was not allowed. We find that the department has arrived at the value not only in violation of the Principles of Natural Justice but also the Valuation Rules themselves and also the established jurisprudence on Customs Valuation. We are of the considered opinion that the Revenue has not put forth any valid grounds to reject the impugned order as far as valuation is concerned.

10. In view of the above, we do not find any merit in the appeal and therefore, we dismiss the same.

(Order pronounced in the open court on 05/08/2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)