

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

Customs Appeal No.40399 of 2023

(Arising out of Order-in-Original No. 101613/2023 dated 10.4.2023 passed by the Commissioner of Customs, Chennai – II)

M/s. Sankhla Industries

No. 2, 1st Floor, Race Course Road
Madhava Nagar,
Bangalore – 560 001.

Appellant

Vs.

Commissioner of Customs

Chennai II Commissionerate
Custom House, No. 60, Rajaji Salai
Chennai – 600001.

Respondent

APPEARANCE:

Shri M. Arjun Raghavendra, Advocate for the Appellant
Shri Anoop Singh, Authorized Representative for the Respondent

CORAM

Hon'ble Shri M. Ajit Kumar, Member (Technical)

Hon'ble Shri Ajayan, T.V., Member (Judicial)

FINAL ORDER NO.40134/2025

Date of Hearing : 18.12.2024

Date of Decision: 29.01.2025

Per M. Ajit Kumar,

This appeal is against Order-in-Original No. 101613/2023 dated 10.4.2023 passed by the Commissioner of Customs, Chennai – II Commissionerate (impugned order).

2. Brief facts of the case are that based on intelligence gathered by DRI, Trivandrum Regional Unit, it appeared that the appellant had imported 'Epoxidised Soya Bean Oil" (**ESBO**) vide 16 bills of entry (**BOE**) during the period from 17.07.2017 to 22.09.2020, which is a chemically modified soya bean oil by classifying it under **CTH 3812 3990** instead of **CTH 1518 0039** and clearing them at a lower rate of

duty. Show Cause Notice dated 26.06.2022 was issued proposing to reclassify the impugned goods imported under the said 15 BoE's under CTH 15180039 and deny the benefit of availment of BCD @7.5% vide Sl. No. 262 of Notification No. 50/2017 dated 30.6.2017. After due process of law, the Ld. Adjudicating Authority confirmed the demand as proposed in the Show Cause Notice and also imposed fine and penalties. Hence this appeal.

3. Shri Arjun Raghavendra, Ld. Advocate appeared for the appellant and Shri Anoop Singh, Ld. Authorized Representative appeared for the respondent.

3.1 The Ld. Advocate for the appellant submitted a table showing all 16 shipments pertaining to the impugned goods, that were cleared during the disputed period arranged chronologically, given in their reply to the SCN and is reproduced below. (BoE 4230263 is not part of the impugned proceedings);

Sl. No.	BoE Number	Date	HSN CODE	Assessable Value	Duty Paid Date	Total Duty
1	2478534	17.07.2017	38123990	₹ 14,89,244	18.07.2017	₹ 4,03,816
2	4230263	01.12.2017	38123990	₹ 15,54,098	02.12.2017	₹ 4,21,401
3	5331154	23.02.2018	38123990	₹ 15,69,370	01.03.2018	₹ 4,35,265
4	5986892	16.04.2018	38123990	₹ 16,41,035	17.04.2018	₹ 4,55,141
5	7028800	01.07.2018	38123990	₹ 17,08,705	03.07.2018	₹ 4,73,909
6	7850542	31.08.2018	38123990	₹ 15,95,484	03.09.2018	₹ 4,42,507
7	8854412	14.11.2018	38123990	₹ 16,43,400	26.11.2018	₹ 4,55,797
8	9682892	17.01.2019	38123990	₹ 14,89,125	18.01.2019	₹ 4,13,009
9	2406562	13.03.2019	38123990	₹ 14,65,610	14.03.2019	₹ 4,06,487
10	3257383	16.05.2019	38123990	₹ 15,25,264	16.05.2019	₹ 4,23,032
11	3735467	20.06.2019	38123990	₹ 15,00,202	21.06.2019	₹ 4,16,081
12	4322465	01.08.2019	38123990	₹ 14,86,331	02.08.2019	₹ 4,12,234
13	5037835	24.09.2019	38123990	₹ 15,72,516	26.09.2019	₹ 4,36,137
14	6400980	09.01.2020	38123990	₹ 16,95,323	11.01.2020	₹ 4,70,198
15	7486311	20.04.2020	38123990	₹ 17,75,017	30.04.2020	₹ 4,92,301
16	8900570	22.09.2020	38123990	₹ 17,06,848	23.09.2020	₹ 4,73,394

The Ld. Advocate stated that out of these 16 Bills of Entry (BoEs), 14 BoEs were cleared through the Risk Management System (RMS) and the ones listed at Sl No. 2 and 7 of Table 1 above, were assessed by

the proper officer of customs instead of being RMS facilitated. While BOE No 4230263 dt 01.12.2017 was assessed provisionally, in the case of BOE 854412 dated 14.11.2018 the Proper Officer asked the appellant to justify the CTH along with product details. They accordingly submitted, the following documents:

- a. A letter describing the captive use of the product for industrial use.
- b. Product literature issued by the overseas exporter.
- c. Material safety data sheet issued by the overseas exporter.

After satisfying himself on the correctness of the classification from the reply given, the proper officer cleared the goods for home consumption accepting the Classification of the goods under HSN 3812 3990, validating the self-assessment made. However, this fact of completion of final assessment is completely ignored in the impugned order. Subsequently, the Appellant continued the import of the goods under the aforesaid classification of CTH 3812 3990. Therefore, all facts were before the department and a demand under section 28(4) was not sustainable since there is no suppression, collusion or wilful misstatement. Further the date of SCN should be taken as the date of supplying all RUDs i.e., 04.01.2023 or date of corrigendum i.e., 24.11.2022. In both scenarios, the notice is issued beyond two years of date of clearance of BoE for home consumption and hence the demand is time barred and the demand, confiscation and penalties are liable to be set aside since there is no collusion or any wilful misstatement or suppression of facts etc. On merits he stated that the impugned ESBO is a collection of organic compounds obtained from the epoxidation of soybean oil. It is used as a secondary plasticizer and

stabilizer in polyvinyl chloride (PVC) plastics. The mere fact that the precursor is Soyabean Oil – a vegetable oil - would not ipso facto make ESBO classifiable under chapter 15. Further, the notes to Chapter 15 at entry (f) specifically exclude goods which are classifiable under Section VI of the HSN. Since chapter 38 of HSN forms part of Section VI and it was and continues to be the bona fide belief of the Appellant that ESBO is classifiable under chapter 38, chapter 15 is not relevant in the instant matter. Further, ESBO is as an industrial product and merits classification under chapter 38-Miscellaneous Chemical Products. The Ld. Advocate prayed that the appeal may be allowed.

3.2 The Ld. AR stated that the appellant manufactures soft PVC compounds and masterbatches for extrusion and injection molding applications. One raw material used is ESBO under CAS No. 8013-07-8 which is a secondary plasticizer. Additionally, they have furnished a 'Product Description Sheet' by the supplier wherein the composition of the product is 99.8% ESBO and 2% water. 'Epoxide Soyabean Oil is admittedly a secondary stabilizer which is used in the manufacturing of PVC compound. The Ld. AR stated that the Explanatory Notes of the CTH 1518 (A) (6) (c), covers ESBO, which covers 'epoxidised oils obtained by treating, for example, soya-bean oil with per acetic acid pre-formed or formed in situ by reaction between hydrogen peroxide and acetic acid in the presence of a catalyst. They are used as plasticisers or stabilizers for e.g. vinyl resins.' He also drew attention to, Advance Ruling, **In Re: M/s Dhanraj Organics Private Limited** [2021 (12) TMI 268 for its persuasive value. As per the Ruling the product epoxidised soya oil is a chemically modified soyabean oil and falls under chapter heading no 1518. The Ld. AR stated the appellant

had not made a true declaration about the chemical nature and application of the imported goods before the Custom authorities at the time of clearance of the same. Instead they classified the product on the basis of the end use specific to their industry namely secondary stabilizer. Further even though in the country of origin certificate issued by the supplier HS code is shown as 151800 in respect of 12 certificates out of 15, the importer classified the goods under a different CTH. Further though one BoE No.4230263 had been assessed provisionally due to classification issue the appellant had deliberately hidden this fact and had willfully submitted factually incorrect data whereby the proper officer has accepted the subsequent classification in BoE 8854412 filed by them. Hence the appellant has wilfully mis-declared customs tariff heading as well as suppression and statement of the true nature of the imported goods resulting in short payment. Hence the department has correctly invoked extended period of time and imposed redemption fine and penalties and the appeal may be rejected

4. We have heard the rival parties and have gone through the appeal memorandum and all connected documents. We find that the following issues have been raised for our consideration.

A) Classification of imported 'Epoxidised Soya Bean Oil' under CTH 3812 (appellant) or CTH 1518 (revenue).

B) Whether the SCN dated 26.06.2022 was time-barred considering that the date of supplying all RUDs was 04.01.2023 or that the date of corrigendum to the SCN was 24.11.2022 as in both scenarios, the issue of SCN is beyond two years of date of clearance of BoE for home consumption.

C) Abrupt change in classification as held in the impugned order without any change in facts or law is improper as the matter attained finality on assessment of BOE 854412

D) Classification adopted by Appellant is in the nature of a claim made on the basis of the belief entertained by the Appellant and therefore, cannot be said to be a misdeclaration.

E) Confiscation and penalties are liable to be set aside since there is no collusion or any wilful mis-statement or suppression of facts or any intentional furnishing of false information.

We shall take up the issues below.

5) Classification of imported 'Epoxidised Soya Bean Oil'

5.1) We find that ESBO has received an NOC from the Central Drugs Standard Control Organisation (Drugs Control Department) for manufacturing PVC compounds certifying the same to be as "Not for medical or human consumption". The appellant has declared the product to be classifiable under CTH 3812. Its their view that ESBO being an industrial product merits classification under chapter 38 - Miscellaneous Chemical Products. Per contra, revenue is of the opinion that vegetable fats and oils like ESBO and their fractions, which are subject to processes like being boiled, oxidized, dehydrated, sulphurised, blown, polymerized by heat in vacuum or in inert gas or otherwise chemically modified fall under Chapter 15 of the Customs Tariff and are more specifically covered under CTH 1518.

5.2) It would at this stage be relevant to examine the respective tariff headings. (I)The relevant portion of CTH 3812 3990 is reproduced below;

3812	PREPARED RUBBER ACCELERATORS; COMPOUND PLASTICISERS FOR RUBBER OR
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		PLASTICS, NOT ELSEWHERE SPECIFIED OR INCLUDED; ANTIOXIDISING PREPARATIONS AND OTHER COMPOUND STABILISERS FOR RUBBER OR PLASTICS
3812 10 00	-	Prepared rubber accelerators
3812 20	-	Compound plasticisers for rubber or plastics
3812 20 10	---	Phthalate plasticisers
3812 20 90	---	Other
	-	Anti-oxidising preparations and other compound stabilizers for rubber or plastics
3812 31 00	--	Mixtures of oligomers of 2, 2, 4 trimethyl-1, 2-dihydroquinoline (TMQ)
3812 39	--	Other
3812 39 10	---	Anti-oxidants for rubber
3812 39 20	---	Softeners for rubber
3812 39 30	---	Vulcanizing agents for rubber
3812 39 90	---	Other

(II) The relevant portion of CTH 1518 0039 is reproduced below;

1518		ANIMAL OR VEGETABLE FATS AND OILS AND THEIR FRACTIONS, BOILED, OXIDISED, DEHYDRATED, SULPHURISED, BLOWN, POLYMERISED BY HEAT IN VACUUM OR IN INERT GAS OR OTHERWISE CHEMICALLY MODIFIED, EXCLUDING THOSE OF HEADING 1516 ; INEDIBLE MIXTURES OR PREPARATIONS OF ANIMAL OR VEGETABLE FATS OR OILS OR OF FRACTIONS OF DIFFERENT FATS OR OILS OF THIS CHAPTER, NOT ELSEWHERE SPECIFIED OR INCLUDED
1518 00	-	Animal or vegetable fats and oils and their fractions, boiled, oxidized, dehydrated, sulphurised, blown, polymerized by heat in vacuum or in inert gas or otherwise chemically modified, excluding those of heading 1516; inedible mixtures or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of this Chapter, not elsewhere specified or included:
	---	Linseed oil
1518 00 11	----	Edible grade
1518 00 19	----	Other
	---	Castor oil, dehydrated
1518 00 21	----	Edible grade
1518 00 29	----	Other
	---	Other vegetable oil and its fats
1518 00 31	----	Edible grade
1518 00 39	----	Other
1518 00 40	---	Other

5.3) The Hon'ble Supreme Court in its judgment in **Commissioner of Customs and Central Excise, Amritsar (Punjab) Vs. D.L. Steels etc** [2022 SCC OnLine SC 863], while approving the use of the HSN for the purposes of classification of goods for tax purposes stated;

“9. The Harmonised System of Nomenclature, developed by the World Customs Organisation, has been adopted in India by way of the Customs Tariff Act, 1975, though there are certain entries in the Schedules to this Act which have not been assigned HSN codes. The Harmonised System is governed by the International Convention on Harmonised Commodity Description and Coding System, which was adopted in 1983, and enforced in January, 1988. This multipurpose international product nomenclature harmonises description, classification, and coding of goods. While the primary objective of the HSN is to facilitate and aid trade, the Code is also extensively used by governments, international organisations, and the private sector for other diverse purposes like internal taxes, monitoring import tariffs, quota controls, rules of origin, transport statistics, freight tariffs, compilation of national accounts, and economic research and analysis. In the present times, given the widespread adoption of the Harmonised System by over 200 countries, it would be extremely difficult to deal with an international trade issue involving commodities, without adverting to the Harmonised System. The Code is the bedrock of custom controls and procedures. The HSN consists of over 5000 commodities groups, which are structured into 21 Sections and 97 Chapters, which are further divided into four and six digit sub-headings. Many custom administrations, like India, use an eight or more digit commodity coding system, with the first six digits being the HSN code.” (emphasis added)

5.4) The Hon'ble Supreme Court in the case of **O.K. Play (India) Ltd. Vs CCE, Delhi** [2005 (180) ELT 300 (SC)] has held that apart from the HSN Explanatory Notes, and the Rules of Interpretation, functional utility, design, shape and predominant usage have also got to be taken into account while determining classification of an item – these are more important than names used in trade or common parlance. Relevant portion is cited below;

“6. Before dealing with the issue of classification, certain points are required to be clarified.

7. In the case of **A. Nagaraju Brothers v. State of Andhra Pradesh** reported in [1994 (72) E.L.T. 801], it has been held by this Court that no one single universal test can be applied for correct classification. There cannot be a static parameter for correct classification.

8. Further, the scheme of the Central Excise Tariff is based on Harmonized System of Nomenclature (for short “HSN”) and the explanatory notes thereto. Therefore, HSN along with the explanatory notes provide a safe guide for interpretation of an Entry.

9. Further, equal importance is required to be given to the Rules of Interpretation of the Excise Tariff. Under Rule 3(a), it is provided that the heading which provides a specific description shall be preferred to a heading having a more general description. For example, in the case of “toys” referred to in the HSN Heading and the Tariff Heading, the description refers to reduced size model of an Article used by adults. This test helps us to understand the difference between “toys” and “furniture”.

10. Lastly, it is important to bear in mind that functional utility, design, shape and predominant usage have also got to be taken into account while determining the classification of an item.

11. The afore stated aids and assistance are more important than the names used in the trade or common parlance in the matter of correct classification.” (emphasis added)

The judgment gives importance to Rules of Interpretation of the Tariff (RIT). Under Rule 3(a), it is provided that the heading which provides a specific description shall be preferred to a heading having a more general description.

5.5) Further, the Hon’ble Supreme Court in its recent judgment dated 18.12.2024, in **Commissioner of Central Excise, Salem Vs M/s. Madhan Agro Industries (India) Private Ltd.**, Civil Appeal No. 1766 of 2009, held that the HSN Explanatory Notes would be binding once the entry in the HSN corresponds to the description in the First Schedule. The Apex Court held that once the entries are aligned and reflect the same position, the General/Explanatory Notes in the HSN would be applicable and cannot be ignored while classifying goods. The relevant paras of the decision are extracted below:

“17. To sum up, the First Schedule to the Act of 1985 is based on the HSN, which is an internationally standardized system developed and maintained by the World Customs Organization for classifying products, and unless the intention to the contrary is found within the Act of 1985 itself, **the HSN and the Explanatory Notes thereto, being the official interpretation of the Harmonized System at the international level, would be of binding guidance in understanding and giving effect to the headings in the First Schedule.** It is only when

a different intention is explicitly indicated in the Act of 1985 itself that the HSN would cease to be of guidance.

...

34. ... Once the entries are aligned and reflect the same position, the General/Explanatory Notes in the HSN would be applicable and cannot be ignored while classifying goods as per the headings in the First Schedule. This position is well settled, as pointed out by this Court in *Wood Craft Products Limited (supra)*. ...” (emphasis added)

5.6) We find that ESBO is a chemically modified vegetable oil. As per the product declaration given by the supplier, the composition of the product is 99.8% epoxidized Soyabean oil and 0.2% water. It is not disputed that the production process undertaken to convert the raw material soyabean oil to epoxidised Soya Bean oil include epoxidation, vacuum distillation, centrifugation and filtration and that it is a secondary plasticiser. As stated in the OIO the product is a bio-based product from the epoxidation of soya bean oil with hydrogen peroxide and either acetic or formic acid obtained by converting the double bonds into epoxy group which is non-toxic and of higher chemically reactivity. As per the Explanatory Notes heading 1518 covers epoxidized oils obtained by treating, for example soya bean oil with per acetic acid pre-formed or formed in situ by reaction between hydrogen peroxide and acetic acid in the presence of a catalyst. They are used as plasticisers or stabilisers for e.g. vinyl resins. The Explanatory Notes of the CTH 1518 are reproduced below:-

15.18 - ANIMAL OR VEGETABLE FATS AND OILS AND THEIR FRACTIONS, BOILED, OXIDISED, DEHYDRATED, SULPHURISED, BLOWN, POLYMERISED BY HEAT IN VACUUM OR IN INERT GAST OR OTHERWISE CHEMICALLY MODIFIED, EXCLUDING THOSE OF HEADING 1516; INEDIBLE MIXTURES OR PREPARATIONS OF ANIMAL OR VEGETABLE FATS OR OILS OR OF FRACTIONS OF DIFFERENT FATS OR OILS OF THIS CHAPTER, NOT ELSEWHERE SPECIFIED OR INCLUDED

(A) Animal or vegetable fats and oils and their fractions, boiled, oxidized, dehydrated, sulphurised, blown, polymerized by heat in vacuum or in inert gas or otherwise chemically modified, excluding those of heading 1516;

This part covers animal or vegetable fats and oils and their fractions which have been subjected to processes which modify their chemical structure thereby improving their viscosity, drying power (i.e. the property of absorbing oxygen when exposed to the air and forming elastic films) or modifying their other properties, provided they retain their original fundamental structure and are not more specifically covered elsewhere, e.g.

- (1) . . .
- (2) . . .
- (3) . . .
- (4) . . .
- (5) . . .

(6) The other modified oils in the heading include:

a. Maleic oils obtained by treating e.g. soya-bean oil with limited amounts of maleic anhydride at a temperature of 200°C or more, in conjunction with sufficient polyhydric alcohol to esterify the extra acid groups. Maleic oils so obtained have good drying properties.

b. Drying oils (such as linseed oil) to which have been added in the cold small quantities of driers (e.g. lead borate, zinc naphthenate, cobalt resinate) to increase their drying properties. These oils are used in the place of boiled oils, in the preparation of varnishes or paints.

c. Epoxidised oils obtained by treating, for example, soya-bean oil with per acetic acid pre-formed or formed in situ by reaction between hydrogen peroxide and acetic acid in the presence of a catalyst. They are used as plasticisers or stabilizers for e.g. vinyl resins.

d. Brominated oils used as an emulsion or suspension stabilizer for essential oils, for example, in the pharmaceutical industry.
(emphasis added)

The note 6(c) fits the impugned goods squarely and the impugned goods hence are covered under CTH 1518. While plasticisers, are also covered by heading 3812 it pertains to the category of compound plasticisers. The HSN notes makes it clear that ESBO fall under CTH 1518 which is the more specific heading hence as per Rule 3 (a) of RIT the goods have been classified correctly. The classification of goods as per the impugned order is hence upheld.

6) The proper date for calculating time bar of SCN / demand

6.1) It is the appellants plea that the SCN should have been issued within the normal time period and the majority of the claim is time

barred, since the goods were cleared and duty paid for the last of the impugned BOE's on 23.09.2020. They have taken up two alternate dates for consideration. (a) 24.11.2022 being the date of corrigendum and (b) 04.01.2023 being the date of supplying all RUDs. We examine this preliminary legal claim made, since the date of issue of SCN would be important in calculating the limitation of time.

6.2) We find that the corrigendum dated 24.11.2022 substituted the "Assistant Commissioner" mentioned in the SCN as the Adjudicating Authority with "the Commissioner". It is the appellants contention that the rightful Adjudicating Authority of the impugned notice was identified only on 24.11.2022 and hence it allowed them to make an effective reply to the Proper Officer on that date only. Whereby the date of SCN should be taken as of that date. We find that the corrigendum in this case has not materially changed either the content or the grounds stated in the original SCN. It only corrects an error without affecting right, privilege, obligation or liability of the appellant from that stated in the SCN. Hence the appellant was not effectively disadvantaged. Such an amendment brought about by a corrigendum to show-cause notice would date back to the notice itself. This plea is hence rejected.

6.3) As regards the date of supplying all RUDs, the appellant has stated that although the SCN mentioned that the relied upon documents were enclosed as Annexure A along with a detailed worksheet as Annexure B, these documents were not enclosed as stated. Repeated requests were made for service of the complete show cause notice vide their letters dated 09.08.2022, 07.09.2022, 03.11.2022 and 24.11.2022. It was only on 04.01.2023 that the

missing annexures were mailed to them by the department. The said documents were quintessential to submit a reply showing cause to the claims made in the notice. We have gone through the correspondence. We find that the omission is not a minor one. The entire set of documents at Annexure A & B, not merely a few documents, were not provided to the appellant. Hence, we agree with the legal grievance made out by the appellant as the issue of SCN is not an empty formality and is an opportunity for the noticee to deny his guilt and establish his innocence. [See **Commissioner of Central Excise, Nagpur Vs Ballarpur Industries Ltd.** — 2007 (215) E.L.T. 489 (S.C.)]. This process can effectively start when he is told what the charges leveled against him are and he is provided the documents and work sheet based on which the allegations against him are based. Hence, the principles of natural justice and procedural fairness require that the time limit for the purpose of calculating time bar, be reckoned from the date when the documents and worksheet was made available to the appellant, enabling him to commence making a proper defence of his case, which was on 04.01.2023.

7. Abrupt change in classification as held in the impugned order without any change in facts or law is improper

7.1) We find that the Finance Act, 2011 introduced self-assessment under which importers and exporters are mandatorily required to self-assess the duty in terms of Section 17 of the Customs Act, 1962. This self-assessment is subject to verification by the proper officer of the Customs and may lead to reassessment by the proper officer of Customs if it is found to be incorrect. In the 16 BoE's filed during the impugned period, 14 BoEs were cleared through the Risk Management

System (RMS) without being interdicted and accepting the importers self-assessment as correct. Of the two remaining BoE's one was assessed provisionally and the other was finally assessed after query by the Proper Officer.

7.2) In **Plasmac Machine Mfg. Co. Pvt. Ltd. v. Collector of Central Excise**, AIR 1991 SC 999 it was held by the Hon'ble Apex court, that if an item was found dutiable then the department could not be prevented from levying duty on it because it had earlier approved classification as there is no estoppel against statute. [Also see: Three Judge Bench judgment of the Hon'ble Supreme Court in **Pefco Foundry Chemicals Ltd. Vs Collector of Central Excise, Pune** – Civil Appeal No. 4457 of 1984. Dated: 19.2.1992].

7.3) Further correcting a classification or duty rate error helps ensure fair competition and prevent market distortion in a competitive business environment. Allowing one entity a tax advantage over others (which in this case is 7.5%) gives it a massive cost advantage and creates an uneven playing field, leading to price undercutting and reduced market share for competitors. This not only distorts the market but also impacts public revenue.

7.4) Further in the indirect tax regime, unlike that of direct taxes where the tax is both paid and borne by the assessee, the incidence of tax is borne by the final consumer or recipient of goods or services and not by the primary manufacturer/ trader/ service provider who collects and deposits the tax to the government account. Thus, correcting a wrong classification and rate of duty may only lead to a temporary difficulty for the primary taxpayer as he has the benefit of setting off

the duty against the credit accumulated due to a lower tax out flow on the final product and further of passing on the tax burden downstream.

7.5) Hence a healthy balance needs to be maintained between the need for uniformity in assessment of similar goods belonging to different assessee, correcting any deviation when necessary and the need to maintain certainty and predictability of taxes over a long period of time against frivolous allegations as per the doctrine of consistency or the precedential value of the earlier pronouncement. No blanket principle is possible and the judgements cited by the appellant are peculiar to the facts of the individual cases. Hence, while once the department has adopted a classification, it should not ordinarily be permitted to take a different stand, it may however be necessary if there is any good or cogent reason for the change and in public interest. In this case the department had investigated the matter by a specialized investigative agency (DRI). Such an enquiry is generally able to unearth facts and obtain statements of those involved which gives a more complete picture of the goods involved and the declaratory practices adopted, which is not possible to be obtained by the normal assessing officer.

7.6) In **Warner Hindustan Ltd. Vs Commissioner** — 1999 (113) E.L.T. 24, the Hon'ble Supreme Court opined that the correct course for making a change of an approved classification was to issue a fresh show cause notice to the appellant on the basis of the fresh details gathered. This would have given the appellant the opportunity to place on record such material as was available to it to establish the contrary. This requirement has been met in the present case. Hence we do not find any infirmity and their plea is rejected

8. Classification based on appellants belief, cannot be said to be a misdeclaration.

8.1) It is the case of revenue that the actions of the appellant was dishonest. They did not make a true declaration about the chemical nature and application of the imported goods before the Customs authorities at the time of clearance of the same. Instead they classified the products on the basis of the end use specific to their industry namely secondary stabiliser. Moreover even though in the country of origin certificate issued by their supplier showed the HS code as 151800 in respect of 12 certificates out of 15 the importer classified the goods under a different CTH. In fact the CHA in his statement had informed that it was Mr Subhash partner of Sankhla Industries (appellant company) who instructed him to file the bill of entry under CTH3812 3990 even after he brought it to his notice that the HS code of the product mentioned in the certificate of origin issued by China Chamber of international commerce was 151800. Statutory requirements under section 46 of the customs act mandate the importer to make true declaration in the BoE. Hence the importer had willfully misstated the customs tariff heading in order to avail lower rate of customs duty. The appellant on the other hand has stated that the issue of the classification with respect to the impugned imports came to the knowledge of the department on two occasions. Firstly, when the second consignment i.e. BoE No 4230263 dated 01.12.2017 was assessed provisionally and for the second time when the BoE No 8854412 dated 14.11.2018 was assessed finally after raising queries about the same issue of classification. The question of their providing factually incorrect data was false and is a wild allegation. Hence the question of suppression mis-declaration etc., does not arise.

8.2) The question before us is whether the importer acted dishonestly and in a non-bonafide manner while making the self-assessment of the impugned goods at the time of import, by mis-declaring the classification heading. Bona fide is a Latin term signifying good faith. Honesty is the core of Good Faith. Its connotation is pure purpose free of taint or deception or dishonest design. Section 52 of the Indian Penal Code defines "good faith" as, "Nothing is said to be done or believed in 'good faith' which is done or believed without due care and attention." Perhaps the appellants action would fail this test. However, the question is whether the lack of bona fide alone would permit for the issue of SCN invoking the extended time limit. We feel that something more than is necessary. In fact, the Customs Act contemplates a positive action which betrays a negative intention of willful default. [See: **Easland Combines, Coimbatore v. The Collector of Central Excise, Coimbatore** - (2003) 3 SCC 410 / 2003 (152) ELT 39 (S.C.)]. There is nothing in the OIO that brings out this negative intention. It's not the departments case that the COO certificate and other documents were not supplied along with the BoE's and hence were suppressed. The non-adoption of the classification as stated in the COO certificate was evident to the departmental officers in the two cases examined by them. The appellant had provided the product literature, letter describing the captive use of the product and the material safety data sheet when called for by the department officer. This was followed by the department accepting the classification in one case. Further the impugned goods which are plasticisers, are also covered by heading 3812, although it may not have been the more specific heading and had to yield to heading 1518. The importer cannot be held responsible

for taking an alternate view when he has submitted all the necessary documents that have helped the department to now come to a different view. The plea of the appellant hence succeeds on this issue. The department has failed to make out a case of suppression or misdeclaration etc.,

9. **Confiscation and penalties are liable to be set aside since there is no suppression of facts etc.**

As discussed above no case of suppression, mis-declaration etc., has been made out. This being so the demand has to be limited to the normal period and the question of confiscation and penalties does not arise. However it is seen that interest is necessarily linked to the duty payable, such liability arises automatically by operation of law and is payable on any demand due. As per the Hon'ble Supreme Court's judgment in **Commissioner of Central Excise, Pune Vs M/s SKF India [2009-TIOL-82-SC-CX]** interest is leviable on delayed or deferred payment of duty for whatever reasons.

10. Having regard to the discussions above, we uphold the classification of the goods under tariff heading 1518 0039 of Customs Tariff Act 1985, as determined in the impugned order, but limit the demand of duty if any to the normal period with appropriate interest. We set aside the confiscation and accordingly the fine and penalty imposed. The appeal is thus partly allowed. The appellant is eligible for consequential relief as per law, if any. The appeal is disposed of accordingly.

(Order pronounced in open court on 29.01.2025)

Sd/-
(AJAYAN T.V.)
Member (Judicial)

Sd/-
(M. AJIT KUMAR)
Member (Technical)