

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH,
COURT NO. I

CUSTOMS APPEAL NO. 51553 OF 2022

[Arising out of the Order-in-Appeal No. CC (A) CUS/D-II/IMP/ICD/TKD/638/2021-22 dated 02/08/2021 passed by Commissioner of Customs (Appeals), New Delhi-110037.]

**M/s Kasturi International
Private Limited,**

206, Rattan Jyoti Building, Rajendra Place,
New Delhi – 110 008.

.....Appellant

Versus

**Commissioner of Customs,
ICD (Import),**

Tughlakabad,
New Delhi – 110 020

....Respondent

APPEARANCE:

None for the appellant.

Shri Mukesh Kumar Shukla, Authorized Representative for the
Department

CORAM:

**HON'BLE JUSTICE MR. DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

FINAL ORDER NO. 51866/2025

**DATE OF HEARING : 01.08.2025
DATE OF DECISION: 12.12.2025**

P.V. SUBBA RAO

The order dated 02.8.2021¹ passed by the Commissioner of Customs (Appeals), New Delhi² upholding the order-in-original dated 17.9.2019³ passed by the Joint Commissioner is

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- 1. impugned order**
 - 2. Commissioner**
 - 3. OIO**

assailed in this appeal by M/s. Kasturi International Pvt. Ltd.⁴ in this appeal.

2. Officers of the Special Intelligence and Investigation Branch⁵ of the Commissionerate of Customs, Tughlakabad received intelligence that the appellant had evaded customs duty by misclassifying the coated paper which it had imported and claiming ineligible exemption notification and therefore, started investigation. They searched the premises of the appellant, recorded statements of its Directors and others and investigated the matter and the Joint Commissioner served upon the appellant a show cause notice dated 6.5.2019⁶ proposing to:

- (i) reclassify the 50 gsm coated paper imported by the appellant and cleared through Bill of Entry no. 9601596 dated 8.5.2017 under **Customs Tariff Heading⁷ 481013** and deny the benefit of exemption notification no. 152/2009 dated 31.12.2009 as amended by notification no. 66/2016 dated 1.1.2017 (S.No. 385);
- (ii) hold the above goods liable to confiscation under section 111(o) of the Customs Act, 1962⁸;
- (iii) recover differential duty of Rs. 12,74,473/- under section 28(1) of the Act along with interest under section 28AA of the Act;
- (iv) impose penalty on the appellant under section 112 (a) (ii) of the Act; and
- (v) appropriate an amount deposited during the investigation towards the demand.

4. appellant

5. SIIB

6. SCN

7. CTH

8. Act

3. The proposals in the SCN were confirmed by the Joint Commissioner in his OIO and upheld by the Commissioner in the impugned order.

4. None appeared on behalf of the appellant today. Ms. Shweta Jain Learned counsel for the appellant had submitted synopsis on 17 September 2024 but sought more time to examine the matter. The matter was accordingly listed on 6 November 2024 when nobody appeared for the appellant. Very reluctantly, we had adjourned the matter to 6 January 2025 when Ms. Garima Goyal appeared for the appellant and sought an adjournment. The matter was adjourned to 14 January 2025. None appeared for the appellant on 14 January 2025. The matter was listed on 25 March 2025 making it clear that the matter would be decided on merits even if the appellant does not appear. None appeared on behalf of the appellant even on 25 March 2025. However, since the learned authorized representative of the Revenue was sick, the matter was adjourned to 28 May 2025 when none appeared on behalf of the appellant. The matter was adjourned to 1 August 2025 making it clear that the matter would be decided on merits even if none appears on behalf of the appellant. When the matter was called today, none appeared on behalf of the appellant.

5. We have heard learned authorized representative of the Revenue and perused the records and proceed to decide the matter on merits.

Submissions on behalf of the appellant

6. In the appeal and in the synopsis filed on 17 September 2024, the following submissions were made on behalf of the appellant.

- (i) The appellant is in the business of importing various types of coated paper and had imported 50 GSM coated paper from South Korea and cleared it by filing the Bill of Entry dated 8.5.2017 classifying it under **Customs Tariff Item⁹ 4810 19 90** and claiming the benefit of the exemption notification no. 152/2009 based on Certificate of Country of Origin¹⁰ issued by the authority in the exporting country.
- (ii) On 7.2.2019, the officers of SIIB searched the premises of the appellant and on 6.5.2019, they issued an SCN proposing to recover differential duty of Rs. 12,74,473/- under section 28(1) of the Act with interest and penalties.
- (iii) The imported goods are correctly classifiable under **CTI 4810 19 90** and they were exempt by notification no. 152/2009. The appellant had classified similar goods under the same CTI and had cleared them in the past without issues.
- (iv) If the classification under **4810 19 90** is not accepted, they should be classified under **4810 29 00** which is also covered by the exemption notification and the classification of the goods under **481013** by the Revenue (which will not be covered by the exemption) may be rejected.
- (v) The claim of alternative classification under **4810 29 00** is due to the fact that the imported goods had more than 10% fiber content obtained through a mechanical or chemi-mechanical process.

9. CTI
10. COO

- (vi) The appellant had also imported the goods through Mundra port classifying the goods under **4810 29 00** and the goods were cleared on execution of a test bond and bank guarantee pending test reports.
- (vii) Although the COO issued by the Korean Chamber of Commerce indicated HSN 481019, it should be treated as procedural infraction and the goods should be classified under **4810 29 00**.
- (viii) The impugned order is not a speaking order.
- (ix) No evidence has been produced to substantiate allegation of evasion of customs duty.
- (x) Since the goods were already cleared for home consumption, they were not liable to confiscation under section 111(o) of the Act.
- (xi) Since the goods cannot be confiscated, penalty under section 112 also cannot be imposed.
- (xii) The impugned order may be set aside and the appeal may be allowed with consequential relief to the appellant including refund of the amount deposited during the investigation.

Submissions on behalf of Revenue

6. Shri Mukesh Kumar Shukla, Learned authorized representative for the Revenue vehemently supported the impugned order and made the following submissions:

- (i) The appellant imported coated paper (CIS) in rolls of 50 GSM (grams per square metre) from South Korea and filed Bill of Entry dated 8.5.2017 classifying the goods under **CTI 4810 19 90** and claiming the benefit of Country of Origin based exemption notification no. 152/2009-Cus.
- (ii) The benefit of exemptions under COO certificates is available as per the bilateral agreements which are reflected in the corresponding exemption notifications. The exemption notification in this case was 152/2009-Cus which was available to goods falling under **481019** but was NOT available to goods falling under **481013**.

- (iii) The appellant had self-assessed and cleared the goods classifying them under **CTI 4810 19 90** but investigation showed that the goods were in roll form and the correct classification was **CTI 4810 1300** and they were not covered by the exemption notification.
- (iv) During investigation and even in the appeal and synopsis submitted, the appellant came up with an altogether alternative classification **CTI 4810 29 00** on the ground that the goods had more than 10% of pulp made through mechanical or chemi-mechanical processes. This classification was not in COO certificates or any documents submitted by the appellant at the time of assessment.
- (v) The correct classification of the goods is under **CTI 4810 13 00** because the goods were in rolls. Consequently, the demand of duty needs to be upheld.
- (vi) Goods can be confiscated under section 111(o) even after they have been cleared for home consumption as held by the Supreme Court in **Sheshank Sea Foods Pvt. Ltd. versus Union of India**¹¹ which was relied on by the Supreme Court in **Commissioner of Customs, Hyderabad versus Pennar Industries Ltd.**¹²
- (vii) Therefore, there is no infirmity in the impugned order upholding the order holding that the goods were liable to confiscation under section 111(o) and imposing penalty under section 112
- (viii) In view of the above, the impugned order may be upheld and the appeal may be dismissed.

Findings

7. We have considered the submissions advanced by learned authorized representatives and perused the records.

Three issues which need to be decided by us are:

11. 1996 (88) E.L.T. 626 (S.C.)

12. 2015 (322) E.L.T. 402 (SC)

- a) Classification of the goods imported by the appellant under **CTI 4810 13 00** (as held in the impugned order) or under **CTI 4810 19 90** (as claimed by the appellant) or under **CTI 4810 29 00** (claimed by the appellant as an alternative submission).
- b) Applicability of the exemption notification 152/2009-Cus to the imported goods in the light of (a) above and consequential demand of duty of customs under section 28 (1) of the Act [the entire demand is within the normal period of limitation]
- c) In the facts of the case, liability of the imported goods to confiscation under section 111(o) of the Act;
- d) Consequent to (c) above, liability of the appellant to penalty under section 112

Classification of the goods

8. There is no dispute about the nature of the goods or the country of their origin. They coated paper of 50 gsm in rolls imported from South Korea. The relevant entries in the Customs Tariff are reproduced below:

4810	Paper and Paperboard, Coated on one or both sides with Kaolin (China Clay) or other inorganic substances, with or without a binder, and with no other coating, whether or not surface – coloured, surface-decorated or printed, in rolls or rectangular (including square) sheets, of any size - Paper and paperboard of a kind used for writing, printing or other graphic purposes, not containing fibres obtained by a mechanical or chemi-mechanical process or of which not more than 10% by weight of the total fibre content consists of such fibres :
4810 13	-- In rolls :
4810 13 10	--- Imitation art paper
4810 13 20	--- Art paper
4810 13 30	--- Chrome paper or paperboard
4810 13 90	--- Other
4810 14	-- In sheets with one side not exceeding 435 mm and the other side not exceeding 297 mm in the unfolded state :
4810 14 10	- Imitation art paper
4810 14 20	- Art paper
4810 14 30	- Chrome paper or paperboard
4810 14 90	- Other
4810 19	-- Other :
4810 19 10	--- Imitation art paper
4810 19 20	--- Art paper
4810 19 30	--- Chrome paper or paperboard
4810 19 90	--- Other
	- Paper and paperboard of a kind used for writing, printing or other graphic purposes of which more than 10% by weight of the total fibre content consists of fibres obtained by a mechanical or chemi-mechanical process :
4810 22 00	- Light-weight coated paper
4810 29 00	- Other

9. There is no dispute that the goods fall under the four digit Customs Tariff heading 4810. Under this heading, there are two sub-classifications each with a single dash '-' based on whether the fibres obtained by a mechanical or chemi-mechanical process was 'not more than 10% of the total fibre' or was 'more than 10% of the total fibre'. Both the **CTI 4810 19 90** under which the appellant had classified the goods in the Bills of Entry (which is also the claim of the appellant in the appeal before us) and **CTI 4810 13 90** under which the goods were classified in the impugned order fall under the first single dash classification, i.e., not more than 10% of the total fibre content was of fibres obtained by mechanical or chemi-mechanical processes.

10. Only the alternative claim of classification by the appellant before us (and before lower authorities) of **CTI 4810 29 00** falls under the second single dash, i.e., claiming that more than 10% of the total fibre content was of fibres obtained by mechanical or chemi-mechanical processes. Such an alternative claim cannot be accepted because it is the first claim of the appellant that the content was less than 10% and the alternative claim is that it was more than 10%. In the synopsis submitted on 24 September 2024 on behalf of the appellant, it was claimed that in a consignment imported through Mundra the appellant had claimed classification under **CTI 4810 29 00** and the bills were assessed pending test

reports. It is also the claim of the appellant that it had self-assessed goods filed in the Bills of Entry in the past under **CTI 4810 19 90** and no objection was raised. We find that goods must be classified in each Bill of Entry based on the nature of the goods. The fact that the goods imported through Mundra Port were claimed to have more than 10% fibre content obtained through mechanical or chemi-mechanical processes has no bearing on the goods imported through this Bill of Entry about which the appellant claims both **CTIs** with less than 10% fibre and those with more than 10% fibre. Even if the appellant had cleared goods classifying them under a **CTI** in some Bills of Entry in the past and the department did not take any action that does not prove the correctness of the classification of the goods in those Bills of Entry.

11. Within the first single dash (i.e., having less than 10% fibre obtained through mechanical or chemi-mechanical processes), there are three categories with double dashes '- -'. Those in rolls (**customs tariff sub-heading¹³ 4810 13**), those in sheets (**CTSH4810 14**) and others (**CTSH 4810 19**). The **CTSH 4810 13** is further divided into four categories each with three dashes '- - -' viz., Imitation art paper (**CTI 4810 13 10**), Art paper (**CTI 4810 13 20**), Chrome paper or paperboard (**CTI 4810 13 10**) and Other (**CTI 4810 13 90**). According to the Revenue since imported goods were in rolls and were not imitation art paper or art paper or chrome paper,

13. CTSH

they deserve to be classified under (**CTI 4810 13 90**). According to the appellant the imported goods fall under double dash '- -' Other (**CTSH 4810 19**) and within that the last triple dash '- - -' 'Other'.

12. We have to first decide which is the appropriate double dash '- -' 'In rolls' (**CTSH 4810 13**), 'In sheets' (**CTSH 4810 14**), or 'Other' (**CTSH 4810 19**). The undisputed fact of the case is that imported goods were in Rolls and therefore **CTSH 4810 13** is the correct sub-heading. **CTSH 4810 19** will cover only goods which are neither in rolls nor in sheets. Therefore, Revenue's classification of the imported goods under **CTSH 4810 13** is correct. Within this **CTSH**, since the goods were coated paper and not imitation art paper, art paper or chrome paper, the residual **CTI 4810 13 90** is the correct classification of the imported goods.

13. The appellant's alternative claim of **CTI 4810 29 00** cannot be accepted because it is impermissible to the appellant that the goods are classifiable as having less than 10% of fibre obtained by a mechanical or chemi-mechanical process (first single '-') and alternatively as having more than 10% of such fibre. Evident from the submissions of the appellant is the fact that the alternative submission is only to somehow claim the benefit of the exemption notification since **CTI 4810 13 90** would not be eligible for the exemption notification.

14. **We find in favour of the Revenue and hold that the imported goods deserved to be classified under CTI 4810 13 90.**

Exemption notification and demand of duty

15. Undisputedly, the exemption notification is available to only some goods imported from Korea and these do not include goods falling under **CTI 4810 13 90**. It is not the case of the appellant that goods falling under this CTI will also be eligible for the exemption. Therefore the exemption notification was not available to the imported goods and it has been wrongly taken by the appellant when self-assessing the Bill of Entry.

16. Consequently, the demand of duty short paid deserves to be upheld and is upheld along with applicable interest.

Confiscation of the goods

17. The impugned order held that the goods were liable to confiscation under section 111(o) of the Act but since they were not available, they were not confiscated. This finding that the goods were liable to confiscation is significant because it forms the basis for imposing penalty on the appellant under section 112.

18. Section 111(o) reads as follows:

Section 111. Confiscation of improperly imported goods, etc. -

The following goods brought from a place outside India shall be liable to confiscation: -

(o) **any goods exempted**, subject to any condition, **from duty** or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, **in respect of which the condition is not observed** unless the non-observance of the condition was sanctioned by the proper officer;

19. The case of the Revenue in this appeal is NOT that the exemption was subject to some condition and that the condition was not observed but that the appellant was not entitled to the benefit of the notification at all. Therefore, the case does not fall within the scope of Section 111(o). The order holding that the goods were liable to confiscation therefore, deserves to be set aside.

Penalty

20. Penalty under section 112 is imposable for acts or omissions which rendered goods liable to confiscation. As we have set aside that part of the OIO upheld by the impugned order holding that the goods were liable to confiscation, we also set aside the penalty imposed on the appellant under section 112.

21. The appeal is partly allowed and partly rejected upholding the classification of the goods and confirmation of the demand of duty with interest but setting aside the

confiscation of the goods and imposition of penalty. The appellant will be entitled to consequential relief, if any.

(Order pronounced in open court on 12/12/2025.)

**(JUSTICE DILIP GUPTA)
PRESIDENT**

**(P.V. SUBBA RAO)
MEMBER (TECHNICAL)**

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