

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

REGIONAL BENCH – COURT NO.1

Customs Appeal No.75637 to 75640 of 2022

(Arising out of Order-in-Original No.Kol/Cus/Port/AKR/220-223/2022 dated 29.04.2022 passed by Commissioner of Customs (Appeals), Kolkata)

Commissioner of Customs (Port), Kolkata

15/1, Strand Road, Kolkata-700001

Appellant

VERSUS

M/s Ess Enn Impex

C-17, Wazirpur Industrial Area, Delhi-110052

M/s S.K.International

C-17, Wazirpur Industrial Area, Delhi-110052

Respondent

APPEARANCE :

Shri Manish Mohan, Authorized Representative for the Appellant
Dr.S.K.Mohapatra, Shri Rajat Mishra & Shri Sudipta Ghosh, all Advocates

CORAM:

HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)

HON'BLE MR.RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO...75483-75484/2023

DATE OF HEARING : 17 .05.2023

DATE OF DECISION : 17.05.2023

Per Ashok Jindal :

All the appeals are having a common issue and the same are being disposed of by a common order.

2. The respondents have imported one item, namely, Inflatable Party Items and classified the same under 39269099 of the Customs Tariff Act, 1975. The goods were examined and it was found that the impugned goods, Inflatable Party decoration inflatable item i.e. decoration foil balloon, which is correctly classifiable under CTH 9503 as per the explanatory note of Chapter 95 as well as analytical report No.46/21-22 dated 29.10.2021 issued by NCTC. Therefore, it was held that impugned goods are to be classified correctly under CTH 9503,

which requires BIS Registration and the same was not obtained by the respondents. Consequently, the goods were held liable for confiscation and redemption fine and penalty were imposed.

3. The said order was challenged before the Id.Commissioner (Appeals), who has found that the clarification was given by the Department of Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India dated 24.02.2022. After examining the said clarification, he held that the impugned goods i.e. Inflatable Party decoration inflatable item i.e. decoration foil items, is correctly classified under CTH 9505. Consequently, BIS Registration is not required. Against the said order, the Revenue is before us.

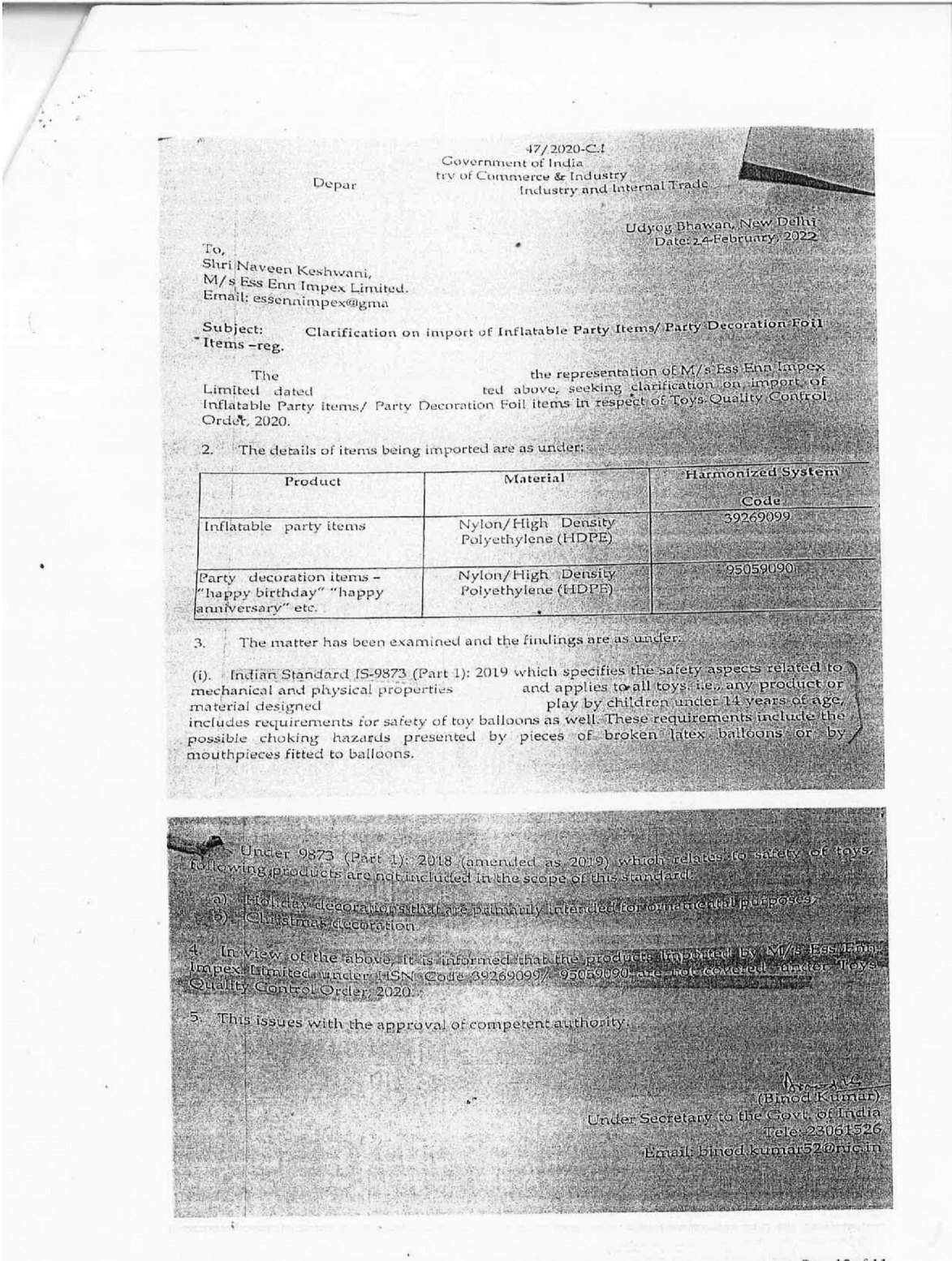
4. Heard the parties and considered the submissions and perused the records.

5. We find that the adjudicating authority while classifying the impugned goods i.e. Inflatable Party decoration inflatable item i.e. decoration foil balloon, held that the same is classified under CTH 9503 in terms of the report issued by NCTC dated 29.10.2021, which is as under :

"i) The value declared compared with contemporary import very low, justify declared value by uploading supporting documents.

ii) Sample examined , the goods are found as party decoration inflatable items classifiable under 9503 instead of declared CTH 3926 attract BIS Registration CFT. Pl. provide BIS CFT. Further, are you agree to change CTH to 9503. If agree, pl. upload consent letter."

6. We have gone through the said report.
7. We find that the report contains that the impugned goods are party decoration inflatable item, but classified under CTH 9503 instead of declared CTH 3926 and held attract BIS Registration. The said report is inconclusive as no detailed analysis has been placed on record. Further, we find that the respondent sought clarification on the import of Inflatable Party decoration inflatable item from the Ministry of Commerce and Industry, Government of India and a clarification was received from the Department of Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India vide F.No.14031/47/2020-CI dated 24.02.2022.
8. The said report is extracted hereinunder :



9. As per the Government of India clarification, it is clear that the Indian Standard IS Registration i.e. any product or material designed or clearly intended for use in play by children under 14 years of age, includes requirements for safety of toy balloons as well. These requirements include the possible choking hazards presented by pieces of broken latex ballons or by mouthpieces fitted to balloons

10. Further, it was held that the impugned goods imported by the respondent are not covered under Toy Quality Control Order, 2020. As it is clarified that the impugned goods are out of perview of BIS Registration by Ministry of Commerce and Industry, Govt. of India, in that circumstances, we hold that the items in question are not in the scope of BIS Standard and the report sought from NCTC by the Revenue is without any basis.

11. We further hold that the appellants are not required for any BIS Registration for import of the impugned goods i.e. INFLATABLE PARTY ITEM (INPAC).

12. In view of this, we do not find any infirmity in the impugned orders and the same are upheld.

13. The appeals filed by the Revenue are dismissed.

(Dictated and pronounced in the open court)

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(Rajeev Tandon)
Member (Technical)

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