IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: C/375/2009

[Arising out of Order-in-Original No: 63/2009-CC(IMP)/JNCH dated 25th March 2009 passed by the Commissioner of Customs (Import), Nhava Sheva.]

Sunil Traders …***Appellant***

versus

Commissioner of Customs (Import)
Nhava Sheva …***Respondent***

Appearance:

Shri Rohit Pardesi, Advocate for the appellant

Shri VR Reddy, Assistant Commissioner (AR) for the respondent

CORAM:

Hon'ble Justice Dr. Satish Chandra, President
Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing:	**12/12/2017**
Date of decision:	**27/03/2018**

ORDER NO: A/85886 / 2018

Per: C J Mathew

This appeal of M/s Sunil Traders against order-in-original no. 63/2009-CC(IMP)/JNCH dated 25th March 2009 of Commissioner of

Customs (Import), JNCH pertains to the classification of ‘sew on metal button’ imported *vide* bill of entry no. 784321 dated 16th February 2009 under heading 9606 2100 of the First Schedule to the Customs Tariff Act, 1975 with ‘nil’ rate of additional duty. The earlier imports of the appellant between September 2008 and January 2009 against seven bills of entry for a total value of ₹ 45,92840/- was also subject to proceedings for recovery of differential duty of ₹ 6,42,806/- The original authority reclassified the goods under 9606 1010 and subjected them to appropriate rate of additional duty, *i.e.* 14% before 7th December 2008 and 10% after that date. The goods were also held liable to confiscation but the live consignment valued at ₹ 13,62,229/- allowed to be redeemed on payment of fine of ₹ 6,00,000/-. A penalty of ₹ 2,00,000/- was imposed on the importer, M/s Sunil Traders, under section 112(a) of the Customs Act, 19962. Aggrieved by this order M/s Sunil Traders is in appeal before us.

2. The duty in dispute is the difference in rate of additional duty in the two rival classifications. The declared classification was not accepted as the goods were ‘snap buttons’ or ‘snap fasteners’ and not ‘sew buttons’.

3. It is the contention of the Learned Counsel that a reopening of assessments of past was not permissible by recourse to section 28 of Customs Act, 1962, that the adoption of alternative classification was

not backed by appropriate appreciation of the material available on record and that the trade catalogues furnished by them had been disregarded by the adjudicating authority.

4. Learned Authorised Representative contends that the imported buttons were in two parts both of which were to be stitched to the garment opposite to each other for the purpose of being secured and the fastening mechanism consist of a stud and socket in each pair. The sew button, though undoubtedly composed of metal, is, nevertheless, a single unit which is sewn to one side and paired through eyelets to fasten the two ends of the garment. Though the appellant has tried to convince us that the distinction between the fasteners, which are attached to the fabric by means other than stitching, and the impugned goods are metal mechanism that requires stitching, the description and the headings make it clear that the imported items are ‘snap fasteners/snap buttons’ classifiable under 9606 1010.

5. The appellant has objected to the alteration to the classification of the earlier consignments. According to Learned Authorised Representative, the goods are obtained from the same source and the descriptions are identical to those in the live consignment. However, we do not find any evidence of any sample from the previous consignments having been subject to physical or other examination.

In the absence of such sampling, we find no justification for alteration of what is essentially a mechanism for fastening or bringing two ends of a garment together which could be buttons, fasteners or any other, as a ‘fastener’ instead of ‘button’.

6. The dispute is one of classification, both the fasteners and buttons find use in garments and it is only the policy framework of the Government of India that has assigned additional duty to one while exempting the other. Such outcome of policy framework are not permanent and a classification which chooses, in the absence of specific description, to suit commercial advantage does not necessarily imply a deliberate attempt to misdeclare.

7. The goods covered by the live as well as the previous consignments have been held liable for confiscation under section 111(m). In view of our findings above on the earlier consignments there is no ground for sustaining the confiscation of those. Insofar as the live consignments are concerned the outcome in classification of mechanism for joining two ends of a garment does not indicate that any material particular had been suppressed. Accordingly, we do not find any reason to sustain the confiscation of the live consignment. Consequently, imposition of penalties are also not justified. In view of the above we uphold the classification of goods in bill of entry no. 784321 dated 16th February 2009 while we set aside he demand for

recovery of duty on the earlier consignments and also the confiscation and penalties imposed upon the appellant.

(Pronounced in the Open Court on 27/03/2018)

(C J Mathew)
Member (Technical)

(Justice Dr. Satish Chandra)
President

**/as*