

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

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 86047 OF 2020

[Arising out of Order-in-Appeal No: 942(Gr.VI)/2020(JNCH)/Appeal-II dated 24th July 2020 passed by the Commissioner of Customs (Appeals), Nhava Sheva, Mumbai – II.]

Scale Arts In
Flat No. 1010 Aai Building, Vighanahar Society
Near Swami Samarth Temple, Warje, Pune - 411058

... Appellant

versus

Commissioner of Customs (NS-IV)
Jawaharlal Nehru Custom House, Nhava Sheva
Tal: Uran, Dist: Raigad 400707

...Respondent

APPEARANCE:

Shri Vinay N Ansurkar, Advocate for the appellant

Shri Manoj Kumar, Deputy Commissioner (AR) for the respondent

CORAM:

**HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)**

FINAL ORDER NO: A/ 87314/2021

DATE OF HEARING:	13/10/2021
DATE OF DECISION:	16/12/2021

PER: C J MATHEW

The issue for determination in this appeal of M/s Scale Arts In,
challenging order-in-appeal no. 942(Gr.VI)/2020(JNCH)/ Appeal-II

dated 24th July 2020 of Commissioner of Customs (Appeals), Jawaharlal Nehru Custom House, Nhava Sheva, Mumbai – II, is the empowerment vested in the assessing officer to forbear from applying policy prescription on admitted facts pertaining to the imported goods. According to Learned Counsel for the appellant, it is obligatory for the ‘proper officer’ to examine the scope of the safety standards prescribed for any class of goods instead of rigid insistence upon compliance with the conditions laid down in the Foreign Trade Policy in every instance of import to which the policy prescription on standards refers.

2. It is common ground that the consignment of 53 nos. of imported ‘car models’, valued at ₹ 2,52,627/-, was liable to duty of ₹ 92,496/- on assessment of bill of entry no. 6345070/03.01.2020 at the rate prescribed for tariff item 9503 0090 of the First Schedule to Customs Tariff Act, 1975. It has, however, been the consistent stand of the appellant that the imported goods, though classifiable within the description ‘toys, games and sports requisites, parts and accessories thereof’ to which safety standards enumerated in IS 9873 (Part-I): 2012

‘all toys, i.e. any product or material designed or clearly intended for use in play by children less than 14 years of age’

applies, are really ‘collectible models’ intended for adults of varying ages and not for children below the age of 14.

3. According to Learned Counsel, the non-availability of a test of safety for such 'collectibles' intended for persons above the age of 14 had been intimated by Reliable Analytical Laboratories Pvt Ltd, an accredited laboratory, from whom opinion had been solicited. It was also further clarified that appellant was prepared to comply with the requirements but had demurred upon the insistence of the customs authorities for drawal of sample of each type of model which entails surrender of a substantial portion of the consignment leading to loss far higher than the duty involved in the import.

4. In the context of the submission and in the absence of any dispute on valuation, and any duties arising thereof, or on classification, it is the policy requirement that need detailed scrutiny. Schedule I – Import Policy in the ITC-HS 2000 lays down that

2.(D) Import policy for Toys/Dolls etc: Import policy for Toys/Dolls and similar other recreational goods under any chapter will be governed by BIS standards as specified in Policy Conditions 2 of Chapter 95'

This, in our view, does not confer any significance insofar as the present import is concerned as the appellant had claimed classification within chapter 95 of the First Schedule to Customs Tariff Act, 1975. Policy condition (2) in that chapter relates to 'Toys' i.e., EXIM codes 95030010, 95030020, 95030030 and 95030090 with reference to the authority of notification no. 33/2015-20 dated 2nd December 2019. In

terms of the requirements, as existed prior to 2nd December 2019, the documentation prescribed were – (i) certificate that the toys being imported confirm to the standards prescribed by Bureau of Indian Standards (BIS) IS 9873 Part – I , Part – II, Part – III, Part – IV, Part – VII and Part – IX, (ii) certificate that the toys being imported confirm to the standards prescribed in the above aspects and (iii) certificate of confirmation from the manufacturer that representative samples of the toys being imported have been tested by an independent laboratory which is accredited by NABL India and found to meet the specifications indicated above. As per notification no. 26/2015-2020 dated 1st September 2017 and *vide* notification no. 33/2015-2020 dated 24th December 2019, furnishing of ‘certificate of confirmation’ was substituted with

‘Sample will be randomly picked from each consignment and will be sent to NABL accredited Labs for testing and clearance may be given by Customs on the condition that that the product cannot be sold in the market till successful testing of the sample. Further, if the sample drawn fails to meet the required standards, the consignment will be sent back or will be destroyed at the cost of importer.’

This change in requirement was given wide publicity in public notice no. 113/2019 issued by Commissioner of Customs, Nhava Sheva.

5. It is thus clear that all goods conforming to the EXIM code enumerated *supra* are required to comply with all three elements

prescribed in policy condition no. 2 in chapter 95 of ITC HS, 2017. Admittedly, the appellant has not produced any of these and object to the sampling prescribed therein as substitute for the 'certificate of confirmation' that was mandated till 24th December 2019. Even if the objection were to be acceptable as valid, the other two certifications prescribed therein have not been furnished.

6. In the absence of report from the designated authority that the articles under import meet the prescribed safety standards or of a report that these are not required to conform to the detailed specifications therein, the assessing officer cannot accept a claim of exclusion to suffice in their stead. Difficulties, or commercial detriment, in complying with the sampling prescriptions is not justifiable ground for excluding the import consignment from the rigours of prescribed testing that is obligated on the importer by the Foreign Trade Policy. Indeed, the policy has afforded sufficient latitude for such goods to be cleared, pending the completion of the testing requirements, on condition that they would not, commercially, be released in the market. The records do not indicate that this facility had been offered to, or sought for, by the appellant. Neither has the appellant conformed to the policy prescriptions nor have the customs authorities enforced the prescriptions in letter and spirit.

7. The goods are yet pending for clearance for home consumption

and the samples are yet to be subjected to the prescribed test. At the same time, the importer does not have to be inconvenienced by continued detention of the imported cargo while awaiting compliance with the rigours of conditions effective from 2nd December 2019. Consequently, it would be appropriate for the compliance requirements to be re-determined upon furnishing of prescribed certification by the importer. Accordingly, the impugned order is set aside and the matter remanded back to the original authority for necessary action in accordance with the policy condition no. 2 attached to chapter 95 of the ITC HS Import Policy 2017.

8. Appeal is disposed off in these terms.

(Order pronounced in the open court on 16/12/2021)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)