

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

REGIONAL BENCH – COURT No. III

Customs Appeal No. 41689 of 2019

(Arising out of Order-in-Original No. 69743/2019 dated 26.06.2019 passed by Commissioner of Customs, Chennai-II, Custom House, No. 60, Rajaji Salai, Chennai – 600 001)

Commissioner of Customs

Chennai II Commissionerate,
Custom House,
No. 60, Rajaji Salai,
Chennai – 600 001.

...Appellant

Versus

M/s. K.B. Autosys India Pvt. Ltd.

No. 49, Sengadu Village,
Sriperumbudur Taluk,
Kancheepuram – 602 002.

...Respondent

APPEARANCE:+h

For the Appellant : Ms. O.M. Reena, Authorised Representative
For the Respondent : Mr. Hari Radhakrishnan, Advocate

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No. 41198 / 2024

DATE OF HEARING : 20.08.2024
DATE OF DECISION: 10.09.2024

Order :- Per Mr. VASA SESHAGIRI RAO

Customs Appeal No. C/41689/2013 has been filed by the Department, assailing the impugned Order-in-Original No. 69743/2019 dated 26.06.2019 passed by the Commissioner of Customs (Imports) dropping the proposals put forth in the Show Cause Notice dated 30.11.2018.

2. Brief facts are that the Respondent M/s. K.B. Autosys India Pvt. Ltd., engaged in the manufacture of brake pads for automobile sector, have been importing a prepared mixture in powder form comprising various organic and inorganic materials such as aramid fibres, butyl rubber, nitrile rubber, phenolic resin, declaring it as "Binding Material, Parts for Brake, disc brake pads, tool for mould, etc., under CTH 38249090 / 38247900, availing the benefit of Notification No. 152/2009-Cus. dated 31.12.2009 and also Notification No. 50/2017-Cus. dated 30.06.2017 which attracted basic Customs duty @7.5%. Based on the composition and function / usage of the subject imports, the Department was of the view that the subject imports were friction materials, classifiable under CTH 6813 8900 and therefore, a Show Cause Notice dated 30.11.2018 was issued proposing to deny the benefit of aforesaid Notifications and seeking to demand differential duty of Rs.7,53,82,791/- under Section 28(4) along with interest under Section 28AA of the Customs Act, 1962 (ACT) and confiscation of goods under Section 111(m) of the ACT, besides proposing to impose penalties under Section 112(a)/ 114A. After the due process of the law, the Adjudicating Authority *vide* the impugned order dated 26.06.2019 had dropped the proposed proceedings of demand of duty, interest and levy of fine and penalty. Being aggrieved, the Revenue has filed the present appeal

3.1 Shri R. Rajaraman, Ld. Authorised Representative for the Department, affirmed the Grounds of Appeal and averred that the imported item is a friction material in powder form which is formed by high level of processing of each individual ingredient including grinding, mixing of

ingredients under controlled parameters until the desired homogeneous mixture is formed which is ready to be bonded directly. Further, it was submitted that the imported item qualifies the test of being a material that has the desired properties of a friction material and is ready to be bonded to a metal plate and the lab report also clearly established that the imported item is a combination of mostly mineral materials. Therefore, it was contended that the subject imports merit classification under CTH 6813 as 'friction material' and not under CTH 3824 as the exclusions specified in explanatory notes to Chapter 68 is not applicable to the subject imports as it contained mineral materials. Further, it was stressed that Rule 3 of the interpretative rules also provide for a heading which provides most specific description rather than the heading which provide general description.

3.2 It was submitted that the item in powder form as per material data Sheet submitted by the importer, comprised of various friction particles like aramid pulp, cashew dust, barium sulphate, steel wool, Tin, etc., which matched with the findings of the Custom House Lab reports and therefore the impugned order had ignored aspects relating to the composition of "material" imported by the Respondent which were more appropriate to Tariff heading 6813. The Department was of the view that the imported chemical mixture do not merit classification under CTH 3824 and so, consequently the FTA benefit of Notification No. 152/2009 cannot be extended. It was further stressed that the Respondent, being an Accredited Client Programme suppressed the facts by mis-declaration in imports with an intention to avail the benefits of the said Notification and therefore

invocation of extended period under Section 28(4) of Customs Act, 1962 was justified.

4.1 The Ld. Counsel Shri Hari Radhakrishnan for the Respondent submitted that at the time of import, the goods are not a friction material as understood in terms of the CTH 6813. It was submitted that classification under CTH 6813 was clearly ruled out as the HSN explanatory notes to the heading 6813 categorically states that friction material of the heading 6813 to be in the form of sheets, roles, strips, disks, rings, washers, pads or cut to any other shape. Therefore, the friction material, as understood from HSN explanatory notes, are in a specific shape or form and it is an admitted position that the goods in the present case are in a powder form, as presented at the time of assessment. It was averred that it was necessary that the goods, to merit classification under CTH 6813, must have a specific shape, size, form *etc.*, and in this regard placed reliance on the order issued by the Authority for Advance Ruling under GST, Maharashtra in the case of *In Re: Compo Advice India Pvt. Ltd. [2019 (20) GSTL 188 (AAR-GST)]* wherein it was held that only those friction material, which are in different shapes are classifiable under heading 6813. It is submitted that the heading 6813 covers 'Friction material and articles thereof not mounted' and since the goods in the present case are in powder form, which certainly are not mounted on any part or on any assembly or sub-assembly of an automobile, it does not merit classification under CTH 6813.

4.2 It was submitted that in terms of Annexure III to Customs Tariff (Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of the Republic of India and Republic of Korea) Rules, 2009, the preferential treatment can only be denied in the manner provided in clause 12. Unless any of the sub-clauses mentioned under clause 12 are found to apply, the preferential treatment cannot be denied. In the present case, none of the situations mentioned in clause 12 stand attracted and neither has the Proper Officer of Customs written to the issuing authority and caused any verification of the classification mentioned in the COO. Therefore, the Proper Officer is bound to extend the notification benefit by accepting the COO and the classification mentioned thereon.

4.3 It was also submitted that for the previous imports made by the Respondent, proceedings were initiated invoking the extended period of limitation. On appeal, the Commissioner of Customs (Appeals), *vide* Order-in-Appeal No. 1111 of 2015 dated 10.11.2015 allowed the Respondent's appeal after holding that extended period of limitation is not invocable. Further, it was submitted that the issue is regarding classification which was a question of interpretation and there was no allegation that the Respondent had mis-declared the goods. Hence it was averred that invocation of extended period by alleging misclassification and suppression, on the same issue of classification, is not legally tenable.

5. Heard both sides and carefully considered the pleas advanced by both sides.

6. The issues that arise for decision in this appeal are: -
- i. Whether imported "Materials (Binding material for manufacture of Automobile Brakes)" is classifiable under CTH 38249090 / 38247900 as declared/self-assessed by the Respondent or under CTH 68138900 as re-classified/re-assessed by the Appellant-Department? and
 - ii. Whether Extended Period is invocable or not considering the evidence as available in the appeal?

7. The Respondent is engaged in the manufacture of brake pads for supply to automobile industries in and around Chennai. For the purpose of manufacture of brake pads, the Respondent regularly imports a prepared mixture in powder form, which consists of various organic and inorganic materials including metal fibres such as Aramid Fibre, Barium Sulphate Zirconium, Chromium, Copper, Iron, Tin, Butyl Rubber, Nitrile Rubber, Phenolic Resin etc. After importation, these mixtures are further processed by feeding it to a mould after compacting it and subjecting it to heat process at a temperature of 150° Celsius to manufacture brake pads. As per the importer's submissions, the processes they undertake to manufacture Brake Pads from the imported materials are after remixing the materials undergoes a process of hydraulic press, forming, Clamping, curing for 8 hours for binding to become solid and finally grinding to become Brake Pads. It is seen that the Respondent classified the subject mixtures under CTH 3824 9090 / 3824 7900 and had availed the benefit of Notification No. 152/2009-Cus. dated 31.12.2009 and also Notification No. 50/2017-Cus. dated 30.06.2017. The Department issued a Show Cause Notice dated 30.11.2018 proposing to demand differential duty on the subject goods imported *vide*

Bills of Entry Nos. 2411709 dated 12.07.2017 and 2498317 dated 18.07.2017 and also on previous imports as detailed in Annexure I to the Show Cause Notice on the ground that these materials are correctly classifiable under heading CTH 6813 8900 as friction materials and consequently are not eligible for the benefit of the above-mentioned exemption Notifications.

8. In order to determine appropriate classification of the imported 'Materials', a study of relevant provisions of Customs Tariff Act including Section Notes and Chapter Notes and HSN Explanatory Notes is required which are extracted for ready reference: -

Chapter 3824 of Customs Tariff

3824	Prepared binders for foundry moulds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included			
3824 10 00	- Prepared binders for foundry moulds or cores	kg.	10%	-
3824 30 00	- Non-agglomerated metal carbides mixed together or with metallic binders	kg.	10%	-
3824 40	- Prepared additives for cements, mortars or concretes :			
3824 40 10	--- Damp proof or water proof compounds	kg.	10%	-
3824 40 90	--- Other.	kg.	10%	-
3824 50	- Non-refractory mortars and concretes :			
3824 50 10	--- Concretes ready to use known as "Ready-mix Concrete (RMC)".	kg.	10%	-
3824 50 90	--- Other.	kg.	10%	-
3824 60	- Sorbitol other than that of sub-heading 2905 44 :			
3824 60 10	--- In aqueous solution.	kg.	30%	-
3824 60 90	--- Other.	kg.	30%	-
	- Mixtures containing halogenated derivatives of methane, ethane or propane:			
3824 71 00	-- Containing chlorofluorocarbons (CFCs), whether or not containing hydrochlorofluoro-carbons (HCFCs), perfluorocarbons (PFCs) or hydrofluorocarbons (HFCs)	kg.	10%	-
3824 72 00	-- Containing bromochlorodifluoromethane, bromotrifluoromethane or dibromotetrafluoro-ethanes	kg.	10%	-
3824 73 00	-- Containing hydrobromofluorocarbons (HBFCs)	kg.	10%	-
3824 74 00	-- Containing hydrochlorofluorocarbons (HCFCs), whether or not containing perfluorocarbons (PFCs) or hydrofluorocarbons (HFCs), but not containing chlorofluorocarbons (CFCs)	kg.	10%	-
3824 75 00	-- Containing carbon tetrachloride	kg.	10%	-
3824 76 00	-- Containing 1, 1, 1-trichloroethane (methyl chloroform)	kg.	10%	-
3824 77 00	-- Containing bromomethane (methyl bromide) or bromochloromethane	kg.	10%	-
3824 78 00	-- Containing perfluorocarbons (PFCs) or hydrofluorocarbons (HFCs), but not containing chlorofluorocarbons (CFCs) or hydrochlorofluorocarbons (HCFCs)	kg.	10%	-
3824 79 00	-- Other.	kg.	10%	-
	- Goods specified in Sub-heading Note 3 to this Chapter :			
3824 81 00	-- Containing oxirane (ethylene oxide).	kg.	10%	-
3824 82 00	-- Containing polychlorinated biphenyls (PCBs), polychlorinated terphenyls (PCTs) or polybrominated biphenyls (PBBs)	kg.	10%	-
3824 83 00	-- Containing tris(2,3-dibromopropyl) phosphate	kg.	10%	-
3824 84 00	-- Containing aldrin (ISO), camphechlor (ISO) (toxaphene), chlordane (ISO), chlordecone (ISO), DDT (ISO) (clofenotane (INN), 1, 1, 1 - trichloro-2, 2-bis(p-chlorophenyl) ethane), dieldrin (ISO, INN), endosulfan (ISO), endrin (ISO), heptachlor (ISO) or mirex (ISO)	kg.	10%	-
3824 85 00	-- Containing 1, 2, 3, 4, 5, 6-hexachlorocyclohexane (HCH (ISO)), including lindane (ISO, INN)	kg.	10%	-
3824 86 00	-- Containing pentachlorobenzene (ISO) or hexachlorobenzene (ISO).	kg.	10%	-
3824 87 00	-- Containing perfluorooctane sulphonic acid, its salts, perfluorooctane sulphonamides, or perfluorooctane sulphonyl fluoride	kg.	10%	-
3824 88 00	-- Containing tetra-, penta-, hexa, hepta- or octabromodiphenyl ethers	kg.	10%	-
	- Other :			
3824 91 00	-- Mixtures and preparations consisting mainly of (5-ethyl-2-methyl-2-oxido-1, 3, 2-dioxaphosphinan-5-yl) methyl methyl methylphosphonate and bis[(5-ethyl-2-methyl-2-oxido-1, 3, 2- dioxaphosphinan-5-yl) methyl] methylphosphonate :	¹ [kg]	² [10%]	-
3824 99 00	-- Other	kg.	17.5%	-

The above Chapter sub-heading has two main parts: -

- (i) Prepared binder for foundry moulds or cores, and
- (ii) Chemical products and preparations not elsewhere specified or included.

Chapter 6813 of Customs Tariff

6813	Friction material and articles thereof (for example, sheets, rolls, strips, segments, discs, washers, pads), not mounted, for brakes, for clutches or the like, with a basis of asbestos, of other mineral substances or of cellulose, whether or not combined with textile or other materials			
6813 20	- <i>Containing asbestos</i> :			
6813 20 10	--- Brake lining and pads	kg.	15%	-

6813 20 90	--- Asbestos friction materials	kg.	15%	-
	- <i>Not containing asbestos</i> :			
6813 81 00	-- Brake linings and pads	kg.	15%	-
6813 89 00	-- Other	kg.	15%	-

HSN Explanatory Notes

CHAPTER 38

MISCELLANEOUS CHEMICAL PRODUCTS

Chapter Notes.

1.- This Chapter does not cover :

- (a) Separate chemically defined elements or compounds with the exception of the following :
 - (1) Artificial graphite (heading No. 38.01);
 - (2) Insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant-growth regulators, disinfectants and similar products, put up as described in heading No. 38.08;
 - (3) Products put up as charges for fire-extinguishers or put up in fire-extinguishing grenades (heading No. 38.13);
 - (4) Products specified in Note 2 (a) or 2 (c) below;
- (b) Mixtures of chemicals with foodstuffs or other substances with nutritive value, of a kind used in the preparation of human foodstuffs (generally heading No. 21.06);
- (c) Medicaments (heading No. 30.03 or 30.04); or
- (d) Spent catalysts of a kind used for the extraction of base metals or for the manufacture of chemical compounds of base metals (heading No. 26.20), spent catalysts of a kind used principally for the recovery of precious metal (heading No. 71.12) or catalysts consisting of metals or metal alloys in the form of, for example, finely divided powder or woven gauze (Section XIV or XV).

2.- Heading No. 38.24 includes the following goods which are not to be classified in any other heading of the Nomenclature :

- (a) Cultured crystals (other than optical elements) weighing not less than 2.5 g each, of magnesium oxide or of the halides of the alkali or alkaline-earth metals;
- (b) Fusel oil; Dippel's oil;
- (c) Ink removers put up in packings for retail sale;
- (d) Stencil correctors and other correcting fluids put up in packings for retail sale; and
- (e) Ceramic firing testers, fusible (for example, Seger cones).

GENERAL

This Chapter covers a large number of chemical and related products.

It **does not cover** separate chemically defined elements or compounds (usually classified in Chapter 28 or 29), with the exception of the following :

- (1) Artificial graphite (heading 38.01).
- (2) Insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant-growth regulators, disinfectants and similar products, put up as described in heading 38.08.
- (3) Products put up as charges for fire-extinguishers or put up in fire-extinguishing grenades (heading 38.13).
- (4) Cultured crystals (other than optical elements) weighing not less than 2.5 g each, of magnesium oxide or of the halides of the alkali or alkaline-earth metals (heading 38.24).
- (5) Ink removers put up in packings for retail sale (heading 38.24).

For the purposes of Note 1 (b) to the Chapter, the expression "foodstuffs or other substances with nutritive value" principally includes edible products of Sections I to IV.

Section VI
38.23₃/24₁

This heading also covers industrial fatty alcohols which have a waxy character.

The heading **does not include** chemically defined fatty alcohols, of a purity of 90 % or more (calculated on the weight of the dry product) (generally heading 29.05).

38.24 - PREPARED BINDERS FOR FOUNDRY MOULDS OR CORES; CHEMICAL PRODUCTS AND PREPARATIONS OF THE CHEMICAL OR ALLIED INDUSTRIES (INCLUDING THOSE CONSISTING OF MIXTURES OF NATURAL PRODUCTS), NOT ELSEWHERE SPECIFIED OR INCLUDED; RESIDUAL PRODUCTS OF THE CHEMICAL OR ALLIED INDUSTRIES, NOT ELSEWHERE SPECIFIED OR INCLUDED (+).

3824.10 - Prepared binders for foundry moulds or cores

3824.20 - Naphthenic acids, their water-insoluble salts and their esters

3824.30 - Non-agglomerated metal carbides mixed together or with metallic binders

3824.40 - Prepared additives for cements, mortars or concretes

3824.50 - Non-refractory mortars and concretes

3824.60 - Sorbitol other than that of subheading No. 2905.44

- Mixtures containing perhalogenated derivatives of acyclic hydrocarbons containing two or more different halogens :

3824.71 -- Containing acyclic hydrocarbons perhalogenated only with fluorine and chlorine

3824.79 -- Other

3824.90 - Other

This heading covers :

(A) PREPARED BINDERS FOR FOUNDRY MOULDS OR CORES

The heading covers foundry core binders based on natural resinous products (e.g., rosin), linseed oil, vegetable mucilages, dextrin, molasses, polymers of Chapter 39, etc.

These are preparations for mixing with foundry sand to give it a consistency suitable for use in foundry moulds or cores, and to facilitate the removal of the sand after the piece has been cast.

However, dextrans and other modified starches, and glues based on starches or on dextrans or other modified starches are classified in heading 35.05.

(B) CHEMICAL PRODUCTS AND CHEMICAL OR OTHER PREPARATIONS

With only three exceptions (see paragraphs (7), (19) and (31) below), this heading **does not apply** to separate chemically defined elements or compounds.

Chapter 68

Articles of stone, plaster, cement, asbestos, mica or similar materials**Notes.**

1.- This Chapter does not cover :

- (a) Goods of Chapter 25;
- (b) Coated, impregnated or covered paper and paperboard of heading 48.10 or 48.11 (for example, paper and paperboard coated with mica powder or graphite, bituminised or asphalted paper and paperboard);
- (c) Coated, impregnated or covered textile fabric of Chapter 56 or 59 (for example, fabric coated or covered with mica powder, bituminised or asphalted fabric);
- (d) Articles of Chapter 71;
- (e) Tools or parts of tools, of Chapter 82;
- (f) Lithographic stones of heading 84.42;
- (g) Electrical insulators (heading 85.46) or fittings of insulating material of heading 85.47;
- (h) Dental burrs (heading 90.18);
- (i) Articles of Chapter 91 (for example, clocks and clock cases);
- (k) Articles of Chapter 94 (for example, furniture, lamps and lighting fittings, prefabricated buildings);
- (l) Articles of Chapter 95 (for example, toys, games and sports requisites);
- (m) Articles of heading 96.02, if made of materials specified in Note 2 (b) to Chapter 96, or of heading 96.06 (for example, buttons), 96.09 (for example, slate pencils) or 96.10 (for example, drawing slates); or
- (n) Articles of Chapter 97 (for example, works of art).

2.- In heading 68.02 the expression "worked monumental or building stone" applies not only to the varieties of stone referred to in heading 25.15 or 25.16 but also to all other natural stone (for example, quartzite, flint, dolomite and steatite) similarly worked; it does not, however, apply to slate.

GENERAL

This Chapter covers :

- (A) Various products of Chapter 25 worked to a degree **beyond** that permitted by Note 1 to that Chapter.
- (B) The products **excluded** from Chapter 25 by Note 2 (e) to that Chapter.
- (C) Certain goods made from mineral materials of Section V.

68.13 - Friction material and articles thereof (for example, sheets, rolls, strips, segments, discs, washers, pads), not mounted, for brakes, for clutches or the like, with a basis of asbestos, of other mineral substances or of cellulose, whether or not combined with textile or other materials.

6813.20 - Containing asbestos

- Not containing asbestos :

6813.81 -- Brake linings and pads

6813.89 -- Other

Asbestos friction material is usually made by high pressure moulding of a mixture of asbestos fibres, plastics etc.; it can also be made by compressing layers of woven or plaited asbestos which have been impregnated with plastics, pitch or rubber. It may be reinforced with brass, zinc or lead wire, or may sometimes be made up from metal wire or cotton yarn covered with asbestos. Owing to its high friction coefficient and its resistance to heat and wear, this material is used for lining brake shoes, clutch discs, etc., for vehicles of all kinds, cranes, dredgers or other machinery. The heading includes similar friction materials with a basis of other mineral materials (e.g., graphite, siliceous fossil earths) or of cellulose fibre.

According to the particular use for which it is intended, friction material of this heading may be in the form of sheets, rolls, strips, segments, discs, rings, washers, pads or cut to any other shape. The friction material may also be assembled by sewing, may be drilled or otherwise worked.

The heading **excludes** :

- (a) Friction materials not containing mineral materials or cellulose fibre (e.g., those of cork); these are generally classified according to the constituent material.
- (b) Mounted brake linings (including friction material fixed to a metal plate provided with circular cavities, perforated tongues or similar fittings, for disc brakes); these are classified as parts of the machines or vehicles for which they are designed (e.g., heading 87.08).

A Perusal of Section Notes and Chapter Notes and HSN Explanatory Notes reveal that there is no exclusion of the imported 'Material's' classification either under Chapter Heading 3824 or under chapter heading 6813. As such the General Rules to the interpretation of Import Tariff have to be referred to determine the appropriate classification of Imported 'Materials'.

9. The Classification of imported goods under the first schedule of Customs Tariff Act, 1975 is governed by the General Rules for Interpretation (GRI) of Import Tariff. As per Rule 1 of GRI, classification of goods shall be determined according to the terms of the headings and any relative Section or Chapter Notes. For the purposes of Rule 1 of GIR, the relative Section and Chapter Notes apply, unless the context otherwise requires. This is the first Rule to be considered in classifying any product. In other words, if the goods to be classified are covered by the words in a heading and the Section and Chapter Notes do not exclude classification in that heading, that heading would apply to the said goods. If such headings or notes do not otherwise require then the classification is to be determined in accordance with Rule 2 to 6 of said Rules. Rule 2(b) of GRI stipulates that the classification of goods consisting of more than one material or substance shall be according to the principle laid down in Rule 3 of GRI. Rule 3(a) stipulates that the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to a part only of the materials or substances contained in mixture or composite goods, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a precise or complete

description of the goods. Rule 3(b) stipulates that mixtures, composite goods consisting of different materials which cannot be classified under Rule 3(a) shall be classified as if they consisted of the material or component which gives them essential character.

10. The main allegation of the Department is that the imported item is a friction material in powder form which is formed by high level of mixing of ingredients which is ready to be Bonded directly to manufacture Brake Pads. It was alleged that the item imported and declared as 'binding material' as per the Material Safety data Sheet (a copy extracted below), the composition of the imported item and its function / usage when compared with the technical literature matched with that of a friction material. Further, a composite friction material comprised of a binder, fibres, friction modifiers and fillers, all of which are based on major function they perform apart from controlling friction and wear performance. Therefore, since the description, usage, functionalities and composition of the product being imported by the importer matches that of a friction material, it was alleged that the product is not a miscellaneous chemical as classified by the importer under CTH 38249090/ CTH 38247900. It was alleged that the importer's classification under CTH 3824 9090/ CTH 38247900 as incorrect as CTH 3824 is only a residual entry and resort to it is warranted only if the product does not clearly fall for classification under any of the more specific entries of chapter 38. Even a cursory glance of the Chapter Notes would clearly imply that there is no mention of any friction mixtures even remotely connected with the products of the importer and none of the items therein allowed the

liberty of classifying the imported products under the residual entry 3824. Further, the imported 'Material' in powder form as per the Material Data Sheet submitted by the importer, comprises of Aramid Fibres, Barium Sulphate, Cashew Particles-Cured, Graphite, Magnesium Oxide, Iron Oxide, Mica, Tin, Zirconium Silicate, etc., which matched with the Custom House lab reports and therefore appeared to be classifiable under the Tariff heading 6813. One of the Customs Lab reports on the samples drawn and a copy of materials safety data sheet are extracted here for ready reference

(i) Lab Nos. 20, 21 & 24 /DSM/11.08.2017 [(Material-3137E (Binding Material), Material - 3123K (Binding Material & Material-3280(Binding Material) respectively]:

Each of the three samples is in the form of grey coloured fluffy material. Each is composed mainly of inorganic compounds together with organic compounds and metallic fibres. The inorganic portion is composed of compounds of Barium, Chromium, Copper, Iron, Magnesium, Molybdenum, Tin, Sulphate, Zirconium and acid insoluble. The organic portion is composed of polymeric compounds of phenolic type. Each does not answer the presence of cellulosic fibre.

	<u>Lab No.20</u>	<u>Lab No.21</u>	<u>Lab No.24</u>
Moisture =	1.1%	1.1%	1.3%
Ash content =	84.3%	80.1%	75.7%
Acid insolubles =	44.1%	48.7%	50.8%

Material Safety Data Sheet

1. PRODUCT AND COMPANY IDENTIFICATION

Product Name: KBP3123K, 3131A, 3131D, 3137, 3137-8, 3137E, 3137F, 3137R, 3137S, 3145B, 3145C, 3163, 3250, 3280, 5006, 5006A, 5012M, 8028

Common Name: Friction Material
Synonyms: Friction Lining, Brake Lining

Manufacturer:

Name: KB Autosys Co., Ltd
 Address: 54-1, SANJEONG-RI, EUMBONG-MYEON, AHSAN-SI, CHUNGNAM, KOREA
 Emergency Telephone: +82 41 537 5345(ex: 357)

Component	CAS #	Weight %
Aramid Fibres	26125-61-1	> 1
Barium Sulphate	7727-43-7	> 1
Cashew Particles-Cured	68333-94-8	> 1
Chlorobutyl Rubber	9010-85-9	> 1
Chromite Flour	1308-31-2	> 1
Copper (also in bronze)	7440-50-8	> 1
Graphite	7782-42-5	> 1
Iron Oxide	1317-61-9	> 1
Magnesium Oxide	1309-48-4	> 1
Mica	12001-26-2	> 1

Component	CAS#	Weight%
Molybdenum Sulphide	1317-33-5	> 1
Nitrile Rubber	9003-18-3	> 1
Petroleum Coke	64743-05-1	> 1
Phenolic Resin - Cured	9003-35-4	> 1
Tin (also in bronze)	7440-31-5	> 1
Tin Sulphide	1314-95-0	> 1
Vermiculite	1318-00-9	> 1
Wollastonite	13983-17-0	> 1
Zirconium Silicate	14940-68-2	> 1

11. The Respondent, however denied that the imported goods are friction materials as understood in terms of the heading 6813 as the imported goods are subjected to the process of moulding using heat treatment and the mould after machining is then fixed on a steel plate, which becomes a part of the brake pad. It has been submitted that the 'Material' imported is a raw material to friction material and cannot be termed as Friction Material. Relying on the HSN Explanatory Notes to the Chapter Heading 6813, the importer has vehemently contended that friction materials to be classified under Chapter 6813 should be in some form or shape or size. The imported item being in powder form, could not be classifiable under Chapter 6813 as it is only a raw material and requires further processing to manufacture lining of brake pads. However, the Structure of Chapter Heading 6813 indicates that the friction materials and articles are classifiable as containing asbestos or not and also as to whether these are brake linings / pads or friction materials. Friction materials containing asbestos has to be classified under 68132090, whereas brake lining / pads containing asbestos are to be classified under CTH 6813 2010. Brake linings and pads not containing asbestos are classifiable under CTH 6813 8100 whereas friction material not containing asbestos are to be classified under CTH 6813 8900. The imported 'materials' are not containing asbestos and being in powder form has not attained the form of brake lining or pads. So, the imported materials are more appropriately classifiable as 'friction material' not containing asbestos under 6813 8900.

12. The importer *vide* his letter dated 25.07.2017 addressed to the Departmental Authorities has informed that the 'Material' imported mainly consists of 60% binding materials and as such sought classification under 3824 of Customs Tariff Act, 1975. Material Safety Data Sheets and the Chemical Test Reports don't indicate the physical proportion of various organic and inorganic chemicals or metals present therein. However, what is important is the essential character of the 'Material' imported for its classification. Material Safety Data Sheets of the products clearly indicate that the name of the material is known as 'Friction Materials'. It is also noted that the importer was declaring as "Friction Materials" in the initial years of import as evidenced by the Bill of Entry No. 3845778 dated 19.11.2013 as given below:

Sl No	Description declared	Qty	Unit price in USD	Assessable value in Rs.	CTH	BCD availed
1	Material 2363 (Friction Powder for brake lining)	510 8 kg	5 76	195162 00	38249090	7 5%
2	Material 2070 (Friction Powder for brake lining)	599 4 kg	10 1	401568 00	38249090	7 5%

Consequent to raising of Audit Objection in Nov,2013 and issuance of a show cause notice on the issue of classification, the importer has started declaring the imported powder mixture as "Material" (Binding material to be used for manufacture of Brake Pads) of different grades.

13.1 In terms of Rule 2(a) of GIR to Customs Import Tariff, any reference in a heading to an article shall be taken to include a reference to that Article incomplete or unfinished provided that Article has the essential

character of complete or finished article. Imported 'Materials' are friction materials though the processing, compacting, heating, curing and grinding are essential in conversion of these materials into Brake Lining or Friction Pad. Further Rule 3(a) mandates to classify under the heading which provides most specific description as compared to a general description. Rule 3(b) states that Mixtures, Composite goods consisting of different materials or made of different components are required to be classified on the basis of the material or component which gives them essential character. Even by applying the 'User Test' or Functional Test, we are of the view that imported materials are classifiable as Friction Materials under Chapter Heading 6813 and reliance in this regard is placed on the decision of the Hon'ble Supreme Court in M/s Annapurna Carbon Industries Co. Ltd. Vs. State of Andhra Pradesh (1976SCR(3) 561) wherein the Hon'ble Court specified while applying the user test that although it's very difficult to classify commodity according to the use to which it is put ,however where the entry under consideration had linked the taxable object with its use, the goods can be classified according to the user test. Further, in the case of New Prasanthi Automobiles Company Vs. State of Kerala (1993(91)STC565), Hon'ble Kerala High Court has held as follows on the classification of Automobile Jack :

" 13. A person seeing an automobile jack is not likely to understand it as a mere iron and steel article. He is likely to understand it only as an adjunct to the automobile necessary for its proper and effective use. He will view it as something which is sold by an automobile dealer and as something which every user of an automobile should necessarily possess. Being so, we find it difficult to accept the contention of the assessee that the jack is a mere iron and steel article and not an accessory to a motor vehicle. The statutory authorities were right in holding that the jack was an accessory falling under entries 138 and 125 respectively of the First Schedule before and after July 1, 1987 liable to tax at 15 per cent."

Though the above case laws have been rendered in the context of Sales Tax issues, the same are relevant and equally applicable to the facts of this appeal.

13.2 Considering the composition of the materials and their usage in the manufacture of the brake pads indicate that imported materials are more appropriately classifiable under Chapter Heading 6813 as friction material. Even the Material Safety Data Sheet also indicates the name of the material as friction material and by synonyms as friction lining and brake lining as evidenced by the material safety data sheet extracted above.

14. It is ascertained that Brake Pads are a component of disc brakes used in automotive and other applications. Brake pads are steel backing plates with friction material bound to the surface that faces the disc brake rotor. The components of the brake pad are Steel back plate, welded metal net (for mechanical bonding of friction material), underlayer(for reducing heat transfer from friction material to the brake caliper and also reducing noise generation), Friction material (High Quality Friction Material for optimum braking). From the above it appears that the friction material forms the top/surface layer i.e brake lining of a brake pad. The two-main processes that the Disc pads and the backing plate undergo are the process of using adhesives to bond the friction material to the backing plate and the process of moulding, where the Disc Pads are pressed, heated and cured. Every backing plate has two cavities, and the finished Brake Pad would show that the aforesaid processes of heating, applying pressure and curing, would result in a part of the friction material getting extruded into these cavities,

thus securing the friction material firmly to the back plate and forming one integrated single piece component. This process assists in preventing detachment and fortifying the bonding of the friction material decisively on to the back plate. It is evident that Friction Material in the form consisting of mineral materials with or without textiles are classifiable under CTH 6813 if they are not mounted. But when they are mounted including friction material fixed to a metal plate provided with circular cavities or similar fittings for disc brakes, these are classified as parts of the machines or vehicles for which they are designed. In the present case, the product consists of a friction material (made up of organic and inorganic chemicals and minerals, graphite) which is bonded with a steel backing plate forming an integrated component. It is used in automotive vehicle brakes to stop or slow down the vehicle. From a perusal of the Tariff sub-heading 6813 we observe 'that friction materials and articles thereof (e.g. sheets, rolls, strips, segments, discs, washers, pads) not mounted for brakes or for clutches or the like'....is mentioned in the said heading. It is, therefore, clear that the friction material alone without any steel plate backing would fall under Tariff Heading 6813. The claim of the Appellant that the friction material is only in powder form and not in a particular shape necessitating its classification not under CTH6813 is rejected as we find that such a condition is not a requirement for such classification. Further Chapter subheading 6813 reads as 'friction material and article thereof'. The Respondent's argument that only articles of friction materials like sheets, rolls, strips, segments, discs, washers, pads, etc., are classifiable under Chapter Heading 6813 and not the friction materials in powder form is not legally acceptable. In Para No. 11 above, it has been discussed that friction powder containing asbestos is to

be classified under CTH 68138100 whereas without asbestos is classifiable under CTH 68138900. Thus, chapter heading 6813 includes both friction materials and also articles of friction materials. As such the contention of the Importer Respondent that Friction Materials unless they become an article cannot be classified under Chapter heading 6813 is not acceptable.

15. We also find that the classification adopted by the assessee is incorrect as the Chapter 38 covers prepared binders for foundry moulds or cores which are meant for a different purpose other than for use in automobile industry. Foundries specialize in metal casting to create both ornamental and functional objects made of metal. The casting process includes patternmaking, creating a mould, melting metal, pouring the metal into a mould, waiting for it to solidify, removing it from the mould, and cleaning and finishing the object. We also find that CTH 3824 includes chemical products and preparations of the chemical or allied industries (including those consisting of mixture of natural products) not elsewhere specified or included. Rule 3 of the interpretative rules also provide for heading which provides most specific description rather than heading which provided general description. Considering the specific description and use of the items imported, we find that the item is not classifiable under CTH 3824 but more appropriately classifiable under CTH6813 as per Rule 3(b) of GRI.

(a) Heading 3824 reads as "prepared binders for foundry moulds or cores; chemical products and preparations of the chemical or allied industries including those consisting of mixtures of natural products, not elsewhere specified or included". There are two parts of the heading:-

(i) **Prepared binders for foundry moulds or cores:** In the explanatory notes of HSN it is described as "this heading covers foundry core binders based on natural resinous products (e.g. Resin), linseed oil, vegetable mucilages, dextrin, molasses, polymers of Chapter 39. These are the preparations for mixing with foundry sand to give it a consistency suitable for use in foundry moulds or cores and to facilitate removal of sand after the piece has been cast. From this description it is clear that impugned goods do not fall under this category;

(ii) **Chemical products and preparations of the chemical or allied industries** (including those consisting of mixtures of natural products), not elsewhere specified or included: It is to be noted that only those chemical preparations are included in this part which are not included elsewhere. However, in this case the item is a friction material for which there appears to be a specific heading under chapter 68. Therefore, this part also does not apply in the case of impugned goods.

16.1 In support of his contention that imported material could not be classified under 68138900 of Customs Tariff Act, importer-respondent has relied upon the decision of the Advance Ruling Authority for GST, Maharashtra in the case of *Compo Advice India Pvt. Ltd. [2019 (20) GSTL 188 (AAR-GST)]*. The question that was answered in the above argument is: -

"Whether under which HSN code (Disc Brake Pads) are to be classified under 6813 or under 8708 as different GST rates are applicable to the product depending upon its classification".

The Advance Ruling Authority of GST, Maharashtra has ruled that the Disc Brake Pads would fall under Chapter Heading No. 8708 and rate applicable rate was 28% under GST Law.

16.2 Similarly, in another decision by the Advance Ruling Authority of GST, Tamil Nadu it was ruled that Disc Brake Pads consists of friction material which is made up of organic fibers and minerals and graphite bonded with a steel baking plate forming an integrated component and are used in automobile vehicle brakes to stop or slow down the vehicles and so is classifiable as a part of motor vehicle under Tariff item 87083000 as Brakes and Servo Brakes and parts thereof attracting 14% CGST and 14% SGST.

16.3 These two rulings have no relevance for deciding the classification dispute in this appeal. The issue to be decided here is whether the mixture of chemicals and metal wires declared as Binding Material is classifiable under Chapter Heading No. 38249090 / 38247900 or under Chapter Heading No. 68138900 of Customs Tariff Act, 1985 and not the classification of Disc Brake Pads as given in detail in the above rulings.

16.4 Any advance ruling is mandatorily applicable to the applicant and the concerned field formation and will have only persuasive value in respect

of third parties. The provisions of the Customs Tariff Act and the correct interpretation of applicable GIRs, Section and Chapter Notes as applicable to the facts of the case are essential requirements for determination of any classification of any imported product under the Customs law.

16.5 Another ground raised by the importer Respondent is that the classification of imported 'Material' has been mentioned as 3824 in the country of Origin Certificate obtained in terms of the Customs Tariff (Determination of Origin of Goods under FTA between Governments of the Republic of India and the Republic of Korea) Rules, 2009. A particular reference has been made to Clause 12 of the Procedure as to "Denial of Preferential Tariff treatment" of these rules which reads as under: -

12. Denial of Preferential Tariff Treatment

Except as otherwise provided for in these rules, the importing State party may deny claim for preferential tariff treatment or recover unpaid duties in accordance with its laws and regulations, when,-

- (a) the good does not meet the requirements of the rules;
- (b) the exporter, producer or importer of the good required to maintain records or documentation under paragraph 9 fails to maintain records or documentation relevant to determining the origin of the good or denies access to the records or documentation;
- (c) the importer, exporter or producer fails to provide information that the State party requested pursuant to clause (a) of sub-paragraph (3) of paragraph 10 to demonstrate that the good is an originating good;
- (d) after receipt of a written notification for a verification visit pursuant to sub-paragraph (7) of paragraph 10, the exporter or producer in the territory of the other State party prevents such verification visit; or
- (e) the State party finds a pattern of conduct indicating that an importer, exporter or producer has provided false or unsupported information or declarations that a good imported into its territory is an originating good.

Explanation:- For the purposes of clause (e), "pattern of conduct" means at least two instances of false or unsupported representations by an exporter or producer of a good resulting in at least two written determinations being sent to that exporter or producer pursuant to sub-paragraphs (6) and (9) of paragraph 10, that conclude, as a finding of fact, that Certificates of Origin applied by that exporter or producer with respect to identical goods contain false or unsupported representations.

It has to be noted that the issue for determination in this appeal is appropriate classification of imported 'Materials' under the Indian Customs Tariff and not as to the validity of Country-of-Origin Certificates produced by the Respondent. The classification of goods as mentioned in Country-of-Origin Certificate can be of persuasive value or of guidance, but the

classification of any imported goods has to be finalised in terms of provisions of the Customs Tariff Act along with the General Interpretative Rules to Import Tariff. In this appeal, availability of the benefit of Notifications depend upon the classification of the imported goods and whether these are covered by the Notifications cited *supra*.

16.6 It is important to note that the benefit of Country-of-Origin Certificate cannot be legally denied, if all the conditions in terms of Customs Tariff (Determination of Origin of Goods Under the Preferential Trade Agreement Between the Governments the Republic of India and Republic of Korea) Rules, 2009 are satisfied. We also note that exporting country can mention on the Country-of-Origin Certificate the HSN Code of the importing country thus indicating that the HSN Code of the commodity in exporting country cannot be the sole basis for its classification under the Indian Customs Tarriff Act, 1975. As such, we hold that classification of any imported goods has to be determined in terms of the provisions of Customs Tariff Act, 1975 including Section Notes and Chapter Notes read with the General Rules for Interpretation of Tariff (GIR). In the case of *Sharp India Ltd. Vs. Commissioner of Customs (Imports), Nhava Sheva, Raigad [2019 (366) ELT 153 (Tri.-Bom.)]*, the Tribunal Bombay has held that the classification of imported goods to be determined in accordance with Indian Customs Tariff and not solely on the basis of code mentioned in Certificate-of-Origin. In the context of import of RBD Palmolein mixture under Indo-Sri Lanka Free Trade Agreement (ISFTA), in the case of *Sheel Chand Agrolls P. Ltd. Vs. Commissioner of Customs (Preventive), New Delhi [2016 (331) ELT*

251 (Tri.-Del.)], the Tribunal Delhi has held that the Country of Origin requirements were satisfied even if the goods were classified differently in the Country of Origin Certificate issued.

17. In view of the foregoing discussions, we are of the considered opinion that appropriate classification of the imported product is not under CTH 3824 9090/3824 7900 as classified by the importer respondent. The Revenue was seeking to classify the product under CTH 6813 8900 as friction materials. After going through the provisions of the Customs Tariff Act and after considering the nature and composition of imported product and its essential character and the use to which this material is put to, we hold that it is more appropriately classifiable under CTH 6813 and not under CTH 3824. In view of the above, the impugned order dated 26.6.2019 passed by the Commissioner of Customs (Imports), Customs House, Chennai cannot be sustained and so is ordered to be set aside.

18. On the second issue of invocation of extended period, we find that the Show Cause Notice was issued on 30.11.2018 in respect of imports covered under Bills of Entry 2411709 dated 12.07.2017 and 2498317 dated 18.07.2017 and 187 other bills covering imports from July 2013 to July 2017 invoking extended period under Section 28(4) of the Customs Act, 1962. We also find that the goods under Bills of Entry 2411709 dated 12.07.2017 and 2498317 dated 18.07.2017 were seized and provisionally released. Regarding other Bills, there is no mention whether the same were assessed finally or provisionally. We find that on the same issue involving the same

Respondent, the department had issued a show cause notice under Section 28(4) of the Customs Act, 1962 in respect of "Friction Material" covered under Bill of Entry no. 3845778 dated 19.11.2013 during post-audit clearance and the adjudicating authority rejected the classification declared by the respondent and confirmed the demands. However, vide Order-in-Appeal no. 1111 of 2015 dated 10.11.2015, the lower Appellate authority had dismissed the order-in-original on the ground of limitation without going into the merits on the issue of classification of the imported goods. The Ld. Counsel for the Respondent submitted that the issue is regarding classification which was a question of interpretation and there was no allegation that the Respondent had mis-declared the goods. Hence it was averred that invocation of extended period by alleging misclassification and suppression, on the same issue of classification, is not legally tenable. We find that in the case of *Nizam Sugar Factory Vs. Collector of central Excise, Andhrapradesh [2006(197) ELT 465 (SC)]* the Hon'ble Supreme Court held as follows:

"8. *Without going into the question regarding Classification and marketability and leaving the same open, we intend to dispose of the appeals on the point of limitation only. This Court in the case of P & B Pharmaceuticals (P) Ltd. v. Collector of Central Excise reported in (2003) 3 SCC 599 = [2003 \(153\) E.L.T. 14](#) (S.C.) has taken the view that in a case in which a show cause notice has been issued for the earlier period on certain set of facts, then, on the same set of facts another SCN based on the same/similar set of facts invoking the extended period of limitation on the plea of suppression of facts by the assessee cannot be issued as the facts were already in the knowledge of the department. It was observed in para 14 as follows :*

"14. We have indicated above the facts which make it clear that the question whether M/s. Pharmachem Distributors was a related person has been the subject-matter of consideration of the Excise authorities at different stages, when the classification was filed, when the first show cause notice was issued in 1985 and also at the stage when the second and the third show cause notices were issued in 1988. At all these stages, the necessary material was before the authorities. They had then taken the view that M/s. Pharmachem Distributors was not a related person. If the authorities came to the conclusion subsequently that it was a related person, the same fact could not be treated

as a suppression of fact on the part of the assessee so as to saddle with the liability of duty for the larger period by invoking proviso to Section 11A of the Act. So far as the assessee is concerned, it has all along been contending that they were not related persons, so, it cannot be said to be guilty of not filling up the declaration in the prescribed proforma indicating related persons. The necessary facts had been brought to the notice of the authorities at different intervals from 1985 to 1988 and further, they had dropped the proceedings accepting that M/s. Pharmachem Distributors was not a related person. It is, therefore, futile to contend that there has been suppression of fact in regard M/s. Pharmachem Distributors being a related person. On that score, we are unable to uphold the invoking of the proviso to Section 11A of the Act for making the demand for the extended period."

This judgment was followed by this Court in the case of ECE Industries Limited v. Commissioner of Central Excise, New Delhi reported in (2004) 13 SCC 719 = [2004 \(164\) E.L.T. 236](#) (S.C.). In para 4, it was observed :

"4. In the case of M/s. P&B Pharmaceuticals (P) Ltd. v. Collector of Central Excise reported in [2003 (2) SCALE 390], the question was whether the extended period of limitation could be invoked where the Department has earlier issued show cause notices in respect of the same subject-matter. It has been held that in such circumstances, it could not be said that there was any wilful suppression or mis-statement and that therefore, the extended period under Section 11A could not be invoked."

Similarly, this judgment was again followed in the case of Hyderabad Polymers (P) Ltd. v. Commissioner of Central Excise, Hyderabad reported in [[2004 \(166\) E.L.T. 151](#) (S.C.)]. It was observed in para 6 :

"..... On the ratio laid down in this judgment it must be held that once the earlier Show Cause Notice, on similar issue has been dropped, it can no longer be said that there is any suppression. The extended period of limitation would thus not be available. We are unable to accept the submission that earlier Show Cause Notice was for a subsequent period and/or it cannot be taken into consideration as it is not known when that Show Cause Notice was dropped. If the Department wanted to take up such contentions it is for them to show that that Show Cause Notice was not relevant and was not applicable. The Department has not brought any of those facts on record. Therefore, the Department cannot now urge that findings of the Collector that that Show Cause Notice was on a similar issue and for an identical amount is not correct."

9. *Allegation of suppression of facts against the appellant cannot be sustained. When the first SCN was issued all the relevant facts were in the knowledge of the authorities. Later on, while issuing the second and third show cause notices the same/similar facts could not be taken as suppression of facts on the part of the assessee as these facts were already in the knowledge of the authorities. We agree with the view taken in the aforesaid judgments and respectfully following the same, hold that there was no suppression of facts on the part of the assessee/appellant.*

10. *For the reasons stated above, Civil Appeal Nos. 2747 of 2001 and Civil Appeal No. 6261 of 2003 filed by the assesseees are accepted and the impugned orders are set aside on the question of limitation only. The demands raised against them as well as the penalty, if any, are dropped"*

We also find that the Hon'ble Supreme Court's decision in the case of *Northern Plastic Ltd. Vs. Collector of Customs & Central Excise [1998 (101) ELT 549 (SC)]* held that merely claiming the benefit of exemption or a particular classification under the Bill of Entry does not amount to mis-

declaration under Section 111(m) of the Customs Act, 1962. The Hon'ble High Court of Bombay in the case of *Commissioner of Customs Vs. Gaurav Enterprises [2006 (193) ELT 532 (Bom.)]* has also held that claiming the benefit of exemption in the Bills of Entry filed under the Act does not amount to suppression / mis-declaration. Further, it has been held in the case of *Lewek Altair Shipping Pvt. Ltd. Vs. Commissioner of Customs [2019 (366) ELT 318 (Tri.-Hyd.)]* which has been affirmed by the Hon'ble Supreme Court that claiming an incorrect classification or the benefit of an ineligible exemption Notification does not amount to making a false or incorrect statement as it is not an incorrect description of the goods or their value but only a claim made by the assessee. In the absence of any finding of positive suppression by the Appellant in the impugned order, we find that the allegation of wilful misclassification and intention to evade duty by the Respondent is not at all tenable and misclassification could not be equated with misdeclaration within the meaning of Section 28(4) of the Customs Act, 1962. Considering the above facts that the Respondent is a regular importer of the product which is used in the manufacture of Brake pads and also considering that they were adopting the above classification consistently, we are of the opinion that attributing any *malafide* intention or motive for adopting such classification or claiming exemption benefit of the Notification is not justified, considering the facts of this case. As such invocation of extended period for demand of duty in terms of provision of section 28(4) of Custom Act 1962 is not legal or justified. The issue of limitation is answered in favour of the Respondent importer.

19. To summarise, the Respondent's classification of the impugned goods under Chapter Heading 3824 9090/3824 7900 is rejected and the department's classification under CTH 6813 8900 is upheld. Consequently, the appellant is not eligible for the benefit of the Notification No. 50/2017-Cus. dated 30.06.2017 and Notification no.152/2009-Cus dated 31.12.2009. However, the demand for the normal period along with interest is only upheld and the demand for the extended period is decided in favour of the Respondent importer.

20. Thus, the Department's Appeal is partly allowed and disposed of on the above terms.

(Order pronounced in open court on 10.09.2024)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

MK