CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20979 of 2015

(Arising out of Order-in-Original No.COC-CUSTM-000-COM-040-14-15 dated 22.01.2015 passed by the Commissioner of Customs, Cochin)

M/s. Thomson Impex
40/150-C Nediyuzhathil Towers,
T. D Road, Ernakulam,
Kerala – 682 001. — Appellant(s)

VERSUS

Commissioner of Customs,
Customs House,
Willingdon Island,
Cochin. — Respondent(s)

WITH

1. CUSTOMS APPEAL NO. 20977 of 2015
(Mr. Harikumar R. Vs. Commissioner of Customs, Cochin)

(Arising out of Order-in-Original No.COC-CUSTM-000-COM-040-14-15 dated 22.01.2015 passed by the Commissioner of Customs, Cochin)

2. CUSTOMS APPEAL NO. 20978 of 2015
(Mr. Byjus K Thomas. Vs. Commissioner of Customs, Cochin)

(Arising out of Order-in-Original No.COC-CUSTM-000-COM-040-14-15 dated 22.01.2015 passed by the Commissioner of Customs, Cochin)

3. CUSTOMS APPEAL NO.20722 of 2016
(M/s. Tricone Building Products (I) Pvt. Ltd. Vs. Commissioner of Customs, Cochin)

(Arising out of Order-in-Appeal No.382/2015-16 dated 17.02.2016 passed by the Commissioner of Customs (Appeals), Cochin)

4. CUSTOMS APPEAL NO.20721 of 2016
(Mr. Byjus K Thomas Vs. Commissioner of Customs, Cochin)

(Arising out of Order-in-Appeal No.383/2015-16 dated 17.02.2016 passed by the Commissioner of Customs (Appeals), Cochin)

5. CUSTOMS APPEAL NO.21017 of 2016
(Mr. Harikumar R. Vs. Commissioner of Customs, Cochin)

(Arising out of Order-in-Appeal No.01/2016-17 dated 04.04.2016 passed by the Commissioner of Customs (Appeals), Cochin.)

APPEARANCE:

Mr. Baby, M.A., Advocate for the Appellant.
Mr. Rajashekar B.N.N, Superintendent (AR)for the Respondent.

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

FINAL ORDER NO. 20676 - 20681 / 2026

DATE OF HEARING: **27.03.2026**

DATE OF DECISION: **06.05.2026**

PER: R. BHAGYA DEVI

These appeals Appeal No. C/20977,20978,20979/2015, C/20721,20722,21017/2016 are filed by the appellants M/s. Thomson Impex, Mr. Byju K. Thomas, Mr. Harikumar. R, M/s. Tricone Building Products (I) Pvt. Ltd.

2. The Appellants M/s. Thomson Impex and their sister concern M/s. Tricone Building Products (I) Pvt. Ltd. imported certain products declaring them as aluminium profiles but on investigation it was found that the consignment contained aluminium tubes also along with aluminium profiles and was rightly classifiable under CTH 7608 as against declared classification of CTH 7604 for aluminium profiles. Accordingly alleging mis- declaration of classification and valuation show cause notice was issued for redetermination of classification and value which attracted differential duty. The goods were also held to be liable for confiscation and accordingly redemption fine and penalty was also proposed. The Commissioner in the impugned orders based on the detailed investigations redetermined the classification from CTH 76042990 to CTH 7608 2000 and redetermined the value based on the recovered documents and accordingly differential duty was confirmed. Goods were confiscated and allowed to be redeemed on payment of redemption fine. Penalties were imposed under Section 112(a)

and under Section 114A /114AA of the Customs Act, 1962. Aggrieved by this order the appellant is in appeal before us.

3. The Learned Counsel appearing on behalf of the appellant submits that the Commissioner in the impugned order has demanded differential duty for the past imports for the period from 19.01.2011 to December 2012 by invoking Section 28(4) of the Customs Act, 1962. It is his submission that the extended period cannot be invoked since the classification and valuation during the relevant period was declared correctly and cleared for home consumption after they were being assessed. There's nothing on record to state that the goods were misclassified or there was mis-declaration of value for the past clearances hence the question of invoking suppression, imposing redemption fine or penalty did not arise.

3.1 With regard to bill of entry No.2081766 dated 09.05.2013 it is submitted that the products were declared as aluminium profiles and accepting their classification the good were assessed as aluminium profiles only hence there is no mis-declaration of classification. It is also submitted that goods imported under bill of entry No.40844804 dated 15.07.2011, 9384980 dated 22.02.2013 and bill of entry No.2411461 dated 13.03.2013 were subject to open examination at the time of import and there was no allegation of mis-declaration hence the question of reopening the assessments does not arise. Further it is submitted that for the goods covered vide annexure B of the show cause notice the approved chartered engineer after due inspection clarified that the goods imported by the appellant is aluminium profiles classifiable under CTH 76042990, therefore the allegation about mis-declaration of classification and valuation cannot be sustained. Relied on the Hon’ble Supreme Court decisions in the case of Mirah Exports Pvt. Ltd. Vs. Collector of Customs 1998 (98) ELT 3 (S.C.) and Eicher Tractors Ltd. VS. Commissioner of Customs Mumbai 2000 (122) ELT 321 (S.C.).

4. On the other hand, the Authorised Representative on behalf of the revenue reiterated the findings of the Commissioner in the impugned order and submitted that on examination the description of the goods was found to be mis-declared and documents recovered during the investigation also show that the goods were undervalued. It is also submitted that investigations unearthed different set of invoices hence the value was enhanced based on the recover invoices and also on account of different classification which resulted in higher rate of duty the Commissioner in the impugned order confirmed the demand of duty both on account of classification and valuation. The goods were liable for confiscation hence rightly confiscated and the Commissioner was justified in imposing redemption fine and penalty.

5. Heard both sides. The basic allegation of the department is that the appellant had mis-declared the description of the goods and also investigations unearthed parallel invoices for the imports showing that the goods were undervalued.

5.1. In appeal No. C/20579/2015 we find that the two show-cause notices were issued first show-cause notice dated 17.04.2014 for the live bill of entry No. 3350643 dated 24.09.2013 and subsequent 8 bills of entry which was intercepted and examined by SIIB. The second show-cause notice dated 13.08.2014 were issued for past imports undertaken by the appellant demanding differential duty in the case of 100 bills of entry. In appeal no. C/20722/2016 show cause notice dated 09.10.2014 was issued for mis-declaration of valuation for 3 bills of entry filed by the appellant M/s. Tricone Building Products (I) Pvt. Ltd.

5.2. In the case of live bill of entry No.3350643 dated 24.09.2013 the Commissioner observed that it was filed

declaring them as aluminium profiles in mill finish valued at USD 42,338. On examination of the consignment, it was found that along with aluminium profiles, tubes were imported which were also rightly classifiable under CTH 7608 2000 and not under CTH 7604 2990 as declared by the appellant classifying them as aluminium profiled, hence mis-declaration of classification. It was also noticed that invoice numbers 3799, 3800, 3801 and 3802 were recovered from the office of the importer where the declared value for the same quantity was shown as USD 55755.27 as against the declared value in the bill of entry at USD 42338.40 hence mis-declaration of value. Admitting mis-declaration the appellant remitted an amount of Rs.2,15,323 against the differential duty demanded by the authorities.

5.3 From the records placed before us we find that samples were drawn from consignment as discussed at para 5 of the impugned order which is extracted below:

> "The importer had bill of entry no. 3350643/24.09.13, through Customs Broker-----for clearance of 16.28 MTs of goods declared as 'Aluminium profiles in mill finish'. The said bill of entry having invoice value 42 338.4 0C and F was supported by invoice number 3802/13 dated 11. 09. 13, packing list, bill of lading and mill certificate number 373/CERT/2013 dated 21. 09. 13 issued by the supplier M/S. Eliot extortions LLC------ UAE. The self-assessment of entry, facilitated clearance under RMS was recalled by the investigating unit for detailed examination. On examination of the consignment on 30. 09. 13, it was found that consist of various types of aluminium profiles and aluminium rectangular tubes in mill finish, anodised finish and wood finish. Each type of profile in tubular and other shapes was represented by a unique section number. Some of the goods bearing section number 17501A, 17501B and 13029 were hollow rectangular aluminium tubes with uniform cross-section and concentric inner and outer cross-sections. Three sets of representative samples 2 tubes in wood finish having section number 17501A and 13029, 2 tubes in mill finish having section numbers 17501A and 17501 B and 1 profile in anodised finish having section number 5349AH, in each set were drawn on 24.10.2013 in the presence of two witnesses

and the representative of the importer for visual inspection and classification purposes".

5.4 The Commissioner in the impugned order at Para 19 produces details of goods imported vide bill of entry No. 3350643 dated 29.04.2013 as per the invoices recovered and based on the catalogue submitted by the importer. At para 19.1 he summarizes the same based on the above details which reads as follows:

"19.1 Quantity of each type of item according to description, classification and value of imported goods as per the above table is summarized below:

Sl. No.	Description	Finish	CTH	Weight in Kgs.	Actual Value as per recovered invoices
1.	Profiles	Mill Finish	7604 2990	7524.79	21346.70
2.	Profiles	Wood Finish	7604 2990	1885.28	9803.48
3.	Profiles	Anodised	7604 2990	976.83	3406.21
4.	Tubes	Mill Finish	7608 2000	3999.13	11329.53
5.	Tubes	Wood Finish	7608 2000	1897.95	9869.35
		Total Ex Works Value			55755.27

5.5 The inspection report placed by the appellant on record reads as follows:

classification of samples

(i) Sample number 1 having photographs of 1-3 are of different types of pipes and tubes which of thickness of more than 1mm. it is hard and high-strength aluminium alloys which is having superior corrosion resistance, weldability, brazability, formability and other outstanding mechanical, physical properties and characteristics. It is used for industrial and structural purpose. The said category of goods are classifiable under chapter heading 7608 2000.

5.6 The relevant chapter headings are reproduced below:

7604 Aluminium Bars, Rods and Profiles

7604 10 - Of aluminium, not alloyed :

-- Other :

7604 29 10 --- Hard drawn bare aluminium conductors steel reinforced (A.C.S.R.)

7604 29 20 --- Wire rods

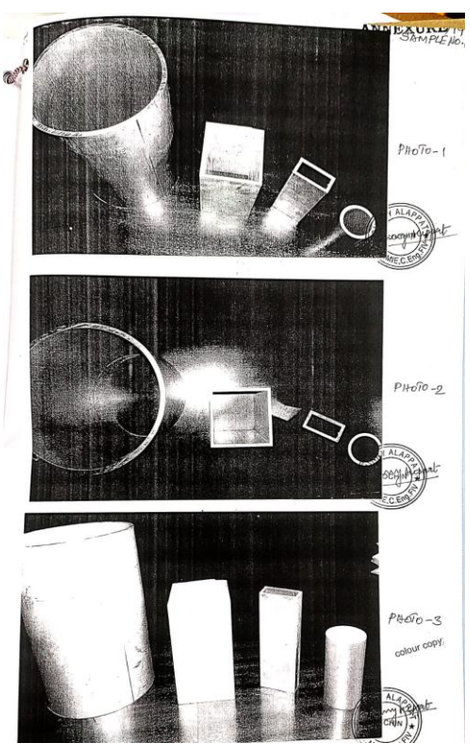
7604 29 30 --- Bars and rods, other than wire rods

7604 29 90 --- Other

7608 Aluminium Tubes and Pipes

7608 10 00 - Of aluminium, not alloyed

7608 20 00 - Of aluminium alloys



5.7 Based on the description of the products and the images placed before us we find that there is no doubt that the goods are rightly classifiable under 7608 as aluminium tubes and pipes. The show-cause notice at para 15 and the impugned order at para 5 and 19.1 has clearly brought in the description of goods as rectangular tubes based on the examination and the catalogue filed by the appellant along with the consignment, accordingly part of the goods which were declared as aluminium

profiles were rightly classifiable as aluminium tubes under CTH 7608 2000 instead of CTH 7604 2990. Therefore, for the bill of entry No. 3350643 dated 24.09.2013 detailed examination was conducted samples were drawn and based on that the Commissioner has reclassified some of the products as tubes as shown in the table above hence, we uphold the classification of these items under 7608 and upheld the duty amount of Rs.41,879/- on account of reclassification.

5.8. With regard to valuation, we find that in the case of bill of entry No.3350643 dated 24.09.2013 there are evidences to show that parallel invoices were recovered for the same quantity and description of goods where the value was higher than the declared value hence the revenue was right in rejecting the declared value and enhancing the value for demand of differential duty. The appellant also admitting the wrong classification and under valuation of goods had paid the differential duty of Rs.41,879/- on account of classification and Rs.8,81,204/- on account of valuation. Accordingly, we uphold the demand of differential duty of Rs.8,81,204/- along with the interest paid by the appellant on account of difference in value and we also uphold the demand of Rs.41,879/- on account of change in classification. Since the goods were mis declared both on account of classification and valuation, we uphold the confiscation of goods but however reduce the redemption fine to Rs.1,00,000/- under Section 125 of the Customs Act, 1962. We also uphold the penalty of Rs.50,000/- on the appellant and Rs. 25,000/- on Shri Byju K Thomas under Section 112(a) of the Customs Act, 1962. Penalty under Section 114AA is set aside.

6. With regard to subsequent 8 bills of entry since there is no dispute on valuation the demand of differential duty is based on re- classification of the products. For the subsequent eight bills of entry filed by the appellant we do not find any samples being drawn and also the impugned order does not specify which of

these items imported by the appellant were to be reclassified as is done in the case of bill of entry No. 3350643. In view of the above we do not find any reason to uphold the classification as suggested by the Commissioner in the impugned order. Since there is no case of valuation the entire demand based on classification is set aside accordingly the redemption fine and penalty is also set aside.

7. For the past imports against hundred bills of entry filed during the period 19.01.2011 to 02.11.2012 the show cause notice was issued on 13.08.2014 demanding differential duty on 100 bills of entry reclassifying the goods and re-determining the value by invoking extended period of limitation. On 17.04.2014 show cause notice was issued demanding differential duty for the period from 09.11.2013 to 21.02.2014 invoking Section 28 (4) of the Customs Act, 1962. Having already issued show cause notice invoking extended period of limitation, the question of issuing another show cause notice based on the same investigations and documents recovered for the previous show cause notice without any evidence to prove that the past consignments were also misclassified/undervalued cannot be justified. Moreover, as is held by the Supreme Court in the case **Nizam Sugar Factory vs. Collector of Central Excise, A.P. 2006 (197) E.L.T. 465 (S.C.)** dated 20.04.2006 wherein it was observed as follows:

> **"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."

7.1. Therefore, for the past imports in the case of 100 bills of entry extended period of limitation cannot be invoked. Moreover, there is nothing on record to show that the examination report proved that the description of the goods was different from what was declared. Based on the appellants own submission that they had not paid duty on the freight as seen from the reply dated 30.10.2014 to the show cause notice we find that the differential duty based on the freight charges needs to be paid. Accordingly, we confirm the demand of duty on account of freight charges for the past clearances for the normal period.

8. With regard to appeal No. C/20722/2016, we find that the appellant M/s. Tricone Building Products (I) Pvt. Ltd. imported three consignments declaring them as aluminium profiles vide bills of entry Nos.5325746 dated 29.11.2011, 5325769 dated 29.11.2011 and 3065383 dated 22.08.2013. The investigations with regard to the a

ppellant M/s. Thomson Impex in appeal No. C/20979/2015 had unearthed parallel invoices wherein it was noticed that the goods imported by them were undervalued. The present appellant is a sister concern of M/s. Thomson Impex and therefore the documents during investigations revealed that both were importing aluminium profiles and undervaluing the same which resulted in the issue of a show-cause notice dated 09.10.2014.

8.1 The investigations against the appellant M/s. Thomas Impex also implicated his sister concern Tricone Building Products (I) (P) Ltd. to whom show cause notice dated 09.10.2014 was issued. The bills of entry involved in this show cause notice are 3065383 dated 22.08.2013, 5325746 dated 29.11.2011 and 5325769 dated 29.11.2011. Based on the investigations it was noticed that the appellant had undervalued the goods. While the declared value was USD 87768.78 the recovered invoices with numbers 2928, 2929, 2930 and 2931 of 2013 the value was shown as USD 129353. In addition,

documents were recovered to show that invoices to be shown as C&F while the freight was actually not included in the value which has been admitted by the appellant. The declared value in the bill of entry 5323746 was USD 55586.85 while the recovered invoice USD 63124 in respect of bill of entry 5325769 the value of the goods was declared as 102926.98 invoice value was 116883 the appellant has admitted only to the extent that freight did not form part of the value. Take into consideration the detailed investigations and based on the documents recovered from the devices of the appellant we find that the goods have been undervalued hence the appellant is liable to pay the differential duty on account of enhanced value. We find that the parallel invoices for the same description and for the quantity which are placed on record prove that there has been undervaluation and also, we find that the differential amounts were transferred to the suppliers which was admitted by the appellant. The Commissioner in the impugned order has also brought on record that the appellant had instructed Elite Extrusions LLC, Dubai the supplier to issue parallel invoice showing lower value for the purpose of custom clearances and based on the original invoices which had higher value the differential amount was being transferred to the supplier through Shri. Harikumar the group general manager of the supplier. However, we find that earlier two show-cause notices were issued dated 17.04.2014 and 13.08.2014 and the present show-cause notice dated 09.10.2014 is based on the same investigations demanding duty for the period 2011 by invoking suppression.

8.2 With regard to show-cause notice dated 13.08.2014 we have already held that:

> "Having already issued show cause notice invoking extended period of limitation, the question of issuing another show cause notice based on the same investigations and documents recovered for the previous show cause notice without any evidence to prove that the past consignments

were also misclassified/undervalued cannot be justified. Moreover, as is held by the Supreme Court in the case **Nizam Sugar Factory vs. Collector of Central Excise, A.P. 2006 (197) E.L.T. 465 (S.C.) dated 20.04.2006".**

8.3 In view of the above, the demand in this appeal on account of valuation is upheld only for the normal period. Accordingly, we set aside the demand for the extended period along with penalty imposed on the appellant and on Shri. Byju Thomas director of Tricone Building Products under Section 114AA of the Customs Act, 1962.

8.4 The penalty imposed on Harikumar on the ground that the differential value based on the parallel invoices was being collected and forwarded to the supplier through Harikumar, the Group General Manger of M/s. Elite Extrusions LLC, Dubai. With regard to undervaluation and mis-classification undertaken by the appellant violating the provisions of the Customs Act, 1962, we find that Shri. Harikumar, the General Manager of the Supplier cannot be held to be violating the provisions of Customs Act, 1962. Therefore, we do not find any justification in imposing penalty on him, the same is set aside.

8.5. Summing up,

(a) we confirm the demand of demand of duty along with interest on bill of entry No. 3350643 dated 24.09.2013 since there is mis-declaration of classification and valuation. The goods are liable for confiscation however we reduce the redemption fine to Rs.1,00,000/- and uphold penalty of Rs.50,000/- on the appellant (Appeal No. C/20979/2015 - M/s. Thomson Impex) and Rs.25,000/- on the partner of the appellant (Appeal No. C/20978/2015 - Mr. Byju K. Thomas) under Section 112(a) and set aside penalty imposed under Section 114AA.

(b) With regard to 8 bills of entry the demand of differential duty along with the interest on account of classification is set aside along with redemption fine and all other penalties.

(c) The demand on all the 100 past bills of entry is confirmed only to the extent of duty to be paid on the freight charges and to be confirmed only for the normal period and all other penalties are set aside.

(d) On 3 bills of entry imported by the appellant M/s. Tricone Building Products (I) Pvt. Ltd., the duty amount is confirmed along with interest only for the normal period and all other penalties are set aside.

Appeals are disposed of on above terms.

(Order pronounced in Open Court on 06.05.2026.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

rv

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