

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

REGIONAL BENCH – COURT No. III

Customs Appeal No. 40130 of 2014

(Arising out of Order-in-Original No. 22512/2013 dated 19.11.2013 passed by Commissioner of Customs,
No. 60, Custom House, Rajaji Salai, Chennai – 600 001)

M/s. Nippon Sea Freight Systems

...Appellant

New No. 18 (Old No. 325), 4th Floor,
Thambu Chetty Street,
Chennai – 600 001.

Versus

Commissioner of Customs

...Respondent

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

With

Customs Appeal No. 40131 of 2014

(Arising out of Order-in-Original No. 22512/2013 dated 19.11.2013 passed by Commissioner of Customs,
No. 60, Custom House, Rajaji Salai, Chennai – 600 001)

M/s. Arjun Chemicals Private Limited

...Appellant

Robert V Chandran Towers,
2nd Floor, 149,
Velacherry Tambaram High Road,
Pallikaranai,
Chennai – 600 100.

Versus

Commissioner of Customs

...Respondent

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

And

Customs Appeal No. 40132 of 2014

(Arising out of Order-in-Original No. 22512/2013 dated 19.11.2013 passed by Commissioner of Customs,
No. 60, Custom House, Rajaji Salai, Chennai – 600 001)

Mr. P.L. Ganeshan, Chief Operating Officer

...Appellant

M/s. Arjun Chemicals Private Limited,
Robert V Chandran Towers,
2nd Floor, 149,
Velacherry Tambaram High Road,
Pallikaranai,
Chennai – 600 100.

Versus

Commissioner of Customs

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

...Respondent

APPEARANCE:

For the Appellants : Mr. S. Murugappan, Advocate (Sl.Nos. 1&3)
Mr. Kannan, Liquidator (Sl.No. 2)
For the Respondent : Mr. Sanjay Kakkar, Authorised Representative

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

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

FINAL ORDER Nos. 40632-40634 / 2026

DATE OF HEARING : 17.12.2025

DATE OF DECISION : 29.05.2026

Per Mr. VASA SESHAGIRI RAO

The present three appeals arise out of common Order-in-Original No.22512/2013 dated 19.11.2013 passed by the Commissioner of Customs (Seaport-Import), Chennai and are therefore taken up together for disposal through this common order. Customs Appeal No.C/40129/2014 filed by M/s. Arjun Chemicals Pvt. Ltd. ("Appellant A1") challenges the differential duty demand, confiscation and penalties imposed upon the importer company, while Customs Appeal Nos.C/40130/2014 and C/40132/2014 filed by M/s. Nippon Sea Freight Systems ("Appellant A3") and Shri P.L. Ganeshan ("Appellant A2") respectively challenge the penalties imposed upon them under Section 112(a) of the Customs Act, 1962.

2. The brief facts of the case are that M/s. Arjun Chemicals Pvt. Ltd. imported "Alkyl Ketene Dimer (AKD Wax)" from China during the period from 18.10.2007 to 30.07.2012 and classified the same under CTH 29141990. Based on investigation conducted by the DRI, the Department alleged that the goods were more appropriately classifiable under CTH 34049090 and that the description "paper finishing chemicals" was intentionally used to evade customs duty. Pursuant to investigation, including recording of statements under Section 108 of the Customs Act, 1962, Show Cause Notices dated 22.10.2012 was issued proposing recovery of differential duty of Rs.2,07,54,839/- with interest, confiscation and penalties. The adjudicating authority confirmed the demand, ordered confiscation and imposed penalties including separate penalties of Rs.5,00,000/- each upon M/s. Nippon Sea Freight Systems and Shri P.L. Ganeshan under Section 112(a) of the Customs Act, 1962, against which the present appeals have been filed.

3. The Ld. Advocate Shri S. Murugappan appearing for M/s. Nippon Sea Freight Systems and Shri P.L. Ganeshan, submits that the classification under Chapter 29 had been consistently adopted and accepted by the Department over several years even after assessment and testing of samples and therefore suppression or deliberate misdeclaration

cannot subsequently be alleged. It is further submitted that there is no evidence establishing conscious knowledge, collusion or deliberate abetment on the part of the CHA or Shri P.L. Ganeshan and that mere mention of the expression “paper sizing / finishing chemicals” in the Bills of Entry cannot justify penalty under Section 112(a) of the Customs Act, 1962. Shri S. Kannan, learned Resolution Professional appearing for M/s. Arjun Chemicals Pvt. Ltd., submitted that CIRP proceedings are continuing before the Hon’ble NCLT, Chennai Bench and that the present appeal is being pursued on behalf of the Corporate Debtor to protect its assets and interests. He accordingly pleaded that the appeal may be decided on merits in accordance with the law. Though the appeal filed by M/s. Arjun Chemicals Pvt. Ltd. has been pending before this Tribunal since 2014, no independent submissions on merits were advanced on their behalf at any point of time. However, since detailed grounds of appeal and statement of facts had already been filed challenging the impugned Order-in-Original on merits as well as on limitation, the factual and legal contentions raised therein have been taken into consideration while adjudicating the present appeal.

4. *Per contra*, the Ld. Authorized Representative Mr. Sanjay Kakkar reiterates the findings contained in the

impugned order and submits that the imported goods were consciously described as "AKD Wax (paper finishing chemicals)" in the Bills of Entry in order to justify classification under Chapter 29 and thereby evade customs duty. It is contended that Shri P.L. Ganeshan, being a Chief Operating Officer of the importer company, was fully aware that AKD Wax could not directly be used as paper finishing chemicals in the paper industry and therefore the suffixing of such expression amounted to deliberate misstatement. It was further submitted that M/s. Nippon Sea Freight Systems, being experienced Customs House Agents, knowingly participated in preparation and filing of Bills of Entry containing allegedly incorrect description and classification and therefore both the appellants were rightly penalized under Section 112(a) of the Customs Act, 1962.

5. We have carefully considered the rival submissions, perused the records of the case, statements recorded under Section 108 of the Customs Act, the synopsis filed, grounds of appeal and the judicial precedents relied upon by both sides.

6. Upon consideration of the rival submissions and records available before us, the following questions arise for determination in the present appeals: -

- i. Whether the reclassification of the imported goods under CTH 34049090 and the consequential demand of differential duty, confiscation, and penalties imposed upon M/s. Arjun Chemicals Pvt. Ltd. are sustainable?
- ii. Whether suppression or wilful misstatement can be alleged when the classification adopted by the importer had been consistently accepted by the Department over several years?
- iii. Whether penalties imposed upon M/s. Nippon Sea Freight Systems and Shri P.L. Ganeshan under Section 112(a) of the Customs Act, 1962 are sustainable?

7. The principal issue arising for consideration in the appeal filed by M/s. Arjun Chemicals Pvt. Ltd. is whether the imported product namely "Alkyl Ketene Dimer (AKD Wax)" is correctly classifiable under CTH 29141990 as claimed by the importer or under CTH 34049090 as alleged by the Department and whether the consequential demand of differential customs duty, confiscation, and penalties are sustainable in law. The connected issue arising in the other two appeals is whether M/s. Nippon Sea Freight Systems and Shri P.L. Ganeshan had consciously participated in or abetted any alleged misdeclaration or misclassification so as to justify imposition of penalties under Section 112(a) of the Customs Act, 1962.

8. At the outset, we find that the Department seeks to reclassify the imported "Alkyl Ketene Dimer (AKD Wax)" from Chapter 29 to Chapter 34 on the ground that the goods are wax preparations. However, the records clearly reveal that the importer had consistently classified the goods under Chapter 29 from 18.10.2007 till commencement of investigation in July 2012 and such classification had been repeatedly accepted by the Department after assessment, examination and even testing of samples. Significantly, prior to introduction of self-assessment with effect from 08.04.2011, classification and assessment were undertaken departmentally by Customs officers themselves. Therefore, when the Department had consciously accepted the classification over several years, the subsequent allegation of deliberate suppression or intentional misdeclaration becomes inherently weak.

9. The records reveal that as many as 243 consignments had been imported and cleared under the same classification prior to commencement of DRI investigation and that the Bills of Entry and connected import documents were regularly scrutinized by Customs authorities. Samples were also reportedly drawn and tested in respect of earlier consignments. This factual position

assumes considerable significance while examining the Department's allegation that the importer had deliberately adopted incorrect classification with an intent to evade customs duty.

10. We further find that the imported goods were consistently declared as "Alkyl Ketene Dimer (AKD Wax)" in all import documents and therefore there was no concealment regarding the identity of the goods. The Department was fully aware throughout the disputed period that the goods imported were AKD Wax and even the investigation records that the consignments bore the markings "AKD". The principal allegation is only regarding use of the expression "paper finishing chemicals" in the Bills of Entry. However, mere reference to industrial application or end-use cannot amount to deliberate misdeclaration when the identity and nature of the goods had been openly declared throughout.

11. The appellant importer has produced technical literature, HSN explanatory notes and classification materials showing that Alkyl Ketene Dimer is an organic compound extensively used in alkaline paper manufacturing processes. The Department has mainly relied upon the HSN/Chapter Notes to Chapter 34 and the CRCL test report obtained from

the live consignment detained under Bill of Entry No.7523378 dated 30.07.2012 to contend that the imported goods possessed waxy characteristics and were used in paper sizing applications.

12. We find from the records that the imported goods were described as "Alkyl Ketene Dimer (AKD Wax)" and were imported in the form of pale-yellow waxy flakes. The CRCL test report obtained from the live consignment detained under Bill of Entry No.7523378 dated 30.07.2012 specifically records that the sample possessed waxy characteristics. The test report further referred to relevant parameters such as dropping point and viscosity which, according to the Department, corresponded to the characteristics contemplated in the HSN explanatory notes relating to Heading 3404 covering artificial waxes and prepared waxes.

13. We also find from the records that even the earlier laboratory test report obtained during the year 2008 had described the imported product as waxy substance. Though the earlier consignments had been assessed under Chapter 29, the query forwarded to the laboratory at the relevant point of time was not specifically directed towards determination of the precise tariff classification issue arising

between Chapters 29 and 34. The earlier reports merely described the physical characteristics of the product and no conclusive classification opinion had been rendered at that stage.

14. We find that the adjudicating authority has also placed reliance upon the HSN explanatory notes to Chapter 34 which refer to chemically produced organic products possessing wax-like properties and physical characteristics such as dropping point and viscosity. The CRCL report in the present case records that the imported goods possessed waxy characteristics and satisfied the physical parameters relevant for waxes under Heading 3404. The records further reveal that Alkyl Ketene Dimer is manufactured from fatty acids such as lauric acid and palmitic acid and exists commercially in solid wax-like form used in paper sizing and finishing applications.

15. We further notice from the materials placed on record that Alkyl Ketene Dimer may exist in different isomeric forms and compositions derived from fatty acids such as lauric acid and palmitic acid, resulting in products exhibiting wax-like physical characteristics rather than remaining separate chemically defined compounds in pure form. This aspect assumes significance because Chapter Note

1 to Chapter 29 applies only to separate chemically defined organic compounds. Once the product assumes the character of chemically produced wax preparation possessing waxy characteristics, commercial identity and functional usage as sizing wax, the classification under Chapter 34 becomes more appropriate.

16. We also notice that divergent classification practices had existed across different Customs formations with imports of AKD Wax being classified at different points of time under Chapters 29, 34 and 38 depending upon the nature and presentation of the product. However, the existence of divergent practices by itself cannot override the specific test results and technical characteristics recorded in the present proceedings. The CRCL report obtained from the live consignment, read together with the HSN explanatory notes and the physical characteristics of the imported goods, substantially supports the Department's view that the goods merit classification under Heading 3404.

17. The importer had strongly relied upon earlier departmental acceptance of classification under Chapter 29. However, we find that a mistaken or inconsistent practice followed earlier cannot prevent the Department from adopting the correct classification subsequently once detailed

examination and laboratory analysis revealed that the imported goods possessed characteristics more appropriately classifiable under Chapter 34. The fact that the goods were commercially used in paper sizing and finishing industry and were imported in waxy flake form further supports the Department's classification.

18. In the light of the CRCL test report, HSN explanatory notes, waxy characteristics, dropping point, viscosity parameters, fatty acid composition involving lauric acid and palmitic acid and the commercial identity of the imported goods as waxy sizing preparation, we hold that the imported product namely "Alkyl Ketene Dimer (AKD Wax)" merits classification under Chapter Heading 34049090 and not under Chapter 29 as claimed by the importer. Accordingly, the issue on classification is answered in favour of the Department and against the appellant(A1).

19. We now proceed to examine the issue of limitation. The entire demand has been raised by invoking the extended period under the proviso to Section 28 of the Customs Act, 1962 alleging suppression and wilful misstatement. However, the records clearly reveal that the imported goods were declared as "Alkyl Ketene Dimer (AKDWax)" in all import documents and the Bills of Entry

were regularly scrutinized by the Department, including testing of samples from earlier consignments. Since the classification under Chapter 29 had been consistently accepted over several years, it cannot be said that the importer had concealed material facts or suppressed the nature of the goods from the Department.

20. We further find that the importer had consistently classified the goods under Chapter 29 from 18.10.2007 onwards and the consignments were regularly cleared by the Department after assessment, examination and even testing of samples in certain cases. Prior to introduction of self-assessment with effect from 08.04.2011, classification and assessment were admittedly undertaken departmentally by Customs officers themselves. Significantly, the DRI investigation commenced only in July 2012 upon detention of the consignment covered under Bill of Entry No.7523378 dated 30.07.2012 and even thereafter consignments continued to be cleared under the same classification. These facts substantially weaken the allegation of wilful suppression or deliberate misdeclaration.

21. We also find support for the above view from the decision of this Tribunal in *M/s. Nexus Electro Steel Ltd. vs. CCE, Puducherry* reported in 2018 (5) TMI 479 - CESTAT

Chennai, wherein the Tribunal held that where a particular practice had been consistently accepted by the Department over a prolonged period, including through assessments and audits, the Revenue could not subsequently take a contrary view retrospectively and invoke adverse consequences on the same set of facts. The Tribunal further observed that when the assessee had acted bona fide on the basis of departmental acceptance, the extended period and consequential penal proceedings would not sustain. The ratio laid down therein squarely applies to the facts of the present case.

22. We also find further support for the above view from the decision of the co-ordinate Bench of this Tribunal in *M/s. Raghav Industrial Products vs. Principal Commissioner of Customs (Import), ICD, TKD, New Delhi* reported in 2019 (5) TMI 2024 - CESTAT New Delhi involving identical issues relating to classification of AKD Wax and invocation of extended period. The Tribunal therein held that where the imported product had been consistently cleared under a particular classification over several years and the relevant facts regarding description, nature and classification of the goods were already within the knowledge of the Department, invocation of extended period alleging suppression or wilful misstatement was legally unsustainable. The Tribunal further

observed that once the Department had itself assessed and permitted clearance of the consignments for a prolonged period, subsequent invocation of extended period on the very same facts could not be justified. The present case stands on an even stronger footing since the records reveal that samples had also been drawn and tested by Customs authorities in respect of earlier consignments and the goods were nevertheless assessed and cleared under Chapter 29.

23. Further, we also take note that in the earlier interim order passed by this Tribunal in the present proceedings reported in *2015 (4) TMI 848 - CESTAT Chennai*, the Tribunal had recorded that the imported goods had been consistently classified under CTH 29141990 over several years without objection from the Department and that the CRCL report merely described the goods as complex organic compound having waxy characteristics. The Tribunal also noticed the arguable nature of the classification dispute and accordingly granted complete waiver of pre-deposit. These observations further support the view that the present dispute essentially relates to interpretation of competing tariff entries and not to any deliberate suppression or fraudulent misdeclaration.

24. In the facts of the present case, though we uphold the Department's classification of the imported goods under Chapter Heading 34049090 on merits, we find that the ingredients necessary for invocation of the extended period under the proviso to Section 28 of the Customs Act, 1962 are not established. The imports were made openly over several years, the Bills of Entry and connected import documents were available before the Department and earlier consignments had also been subjected to examination and testing. Therefore, the allegation of deliberate suppression or wilful misstatement with intent to evade duty cannot be sustained for the purpose of invoking extended period.

25. Consequently, we hold that invocation of the extended period under the proviso to Section 28 of the Customs Act, 1962 is legally unsustainable and the demand pertaining to the extended period is liable to be set aside. However, since we have upheld the classification of the imported goods under Chapter Heading 34049090 on merits, recovery of differential duty shall stand restricted only to the normal period under Section 28(1) of the Customs Act, 1962 together with applicable interest under Section 28AA of the Customs Act, 1962.

26. We note that except for the live consignment covered under Bill of Entry No.7523378 dated 30.07.2012, the goods covered under the earlier Bills of Entry had already been cleared for home consumption and were not available for confiscation at the time of adjudication. Accordingly, following the decision of the Hon'ble Supreme Court in *Finesse Creations Inc. vs. Commissioner of Customs reported in 2009 (248) E.L.T. 122 (S.C.)*, confiscation ordered in respect of such goods is set aside. However, confiscation of the live consignment valued at Rs.63,39,860/- under Section 111(m) of the Customs Act, 1962 and the redemption fine of Rs.6,00,000/- imposed thereon are upheld. Consequently, the penalties imposed upon the importer company, Shri P.L. Ganeshan and M/s. Nippon Sea Freight Systems are also set aside in the absence of any evidence establishing suppression, collusion or deliberate abetment.

28. In view of the foregoing findings, the impugned Order-in-Original No. 22512/2013 dated 19.11.2013 is modified to the extent indicated above. The classification of the imported goods under Chapter Heading 34049090 as sought by the Department is upheld. Recovery of differential duty is restricted to the normal period under Section 28(1) of the Customs Act, 1962 along with applicable interest. Confiscation of the live consignment covered under Bill of

Entry No.7523378 dated 30.07.2012 and the redemption fine of Rs.6,00,000/- imposed thereon are upheld, while the remaining confiscation proceedings and penalties imposed upon the appellants are set aside. The appeals are thus, partly allowed with consequential reliefs, if any, in accordance with law.

(Order pronounced in open court on 29.05.2026)

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

MK

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)