IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Customs Appeal No. 40356 of 2016

(Arising out of Order in Original No. 43072/2015 dated 30.11.2015 passed by the Commissioner of Customs, Chennai – IV)

TTK Protective Devices Ltd. **Appellant**
(formerly known as M/s. T.T.K. LIG Ltd.)
No. 6, Cathedral Road
Chennai – 600 086.

Vs.

Commissioner of Customs **Respondent**
Chennai IV Commissionerate
Custom House
60, Rajaji Salai, Chennai – 600 001.

APPEARANCE:

Shri S. Muthuvenkataraman, Advocate for the Appellant
Smt. O.M. Reena, Authorized Representative for the Respondent

CORAM

Hon'ble Shri M. Ajit Kumar, Member (Technical)
Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NO.40173/2026

Date of Hearing: 08.08.2025
Date of Decision: 03.02.2026

Per M. Ajit Kumar,

This appeal is filed by the appellant against Order in Original No. 43072/2015 dated 30.11.2015 passed by the Commissioner of Customs, Chennai – IV (impugned order).

2. Brief facts of the case are that the appellant is a manufacturer of contraceptives and is importing Natural Rubber Latex. Being an Accredited Client Programme client (**ACP**), the Bills of Entry (**BE**), filed by the appellant has been facilitated by the RMS and cleared as self-assessed without examination of the consignments. The appellant's unit was audited by Chennai II Central Excise Audit Team covering the

period from April 2011 to March 2012. During Audit it was noticed that the importer had imported 'Natural Rubber Latex Concentrate' in liquid form under the trademark EXCEL TEX-D from M/s. Kuala Lumpur Kepong Berhad, Malaysia by classifying the same under CTH 4001 2910 attracting BCD @ 20% vide Sl. No. 491 of Notification No. 21/2002 Cus dated 01.03.2002. However, it appeared to the audit team that the goods were correctly classifiable under CTH 40011020 attracting BCD @ 70% as it appeared that all natural rubber latex is predominantly obtained from rubber tree which is botanically known as Heavea Brazilinsis and in order to merit classification under the Heading 'Hevea' the product should be in a form other than liquid i.e. in the form of strip, sheet etc.. After due process of law, the Ld. Commissioner of Customs rejected the classification adopted by the appellant and reclassified the goods under CTH 40011020 and confirmed the short-paid customs duty of Rs.92,18,355/- along with interest for the period April 2011 to March 2012 and imposed equal penalty under section 114A of the Customs Act, 1962. Hence the present appeal.

3. The learned Advocate Shri S. Muthuvenkataraman appeared for the appellant and Ld. Authorized Representative Smt. O.M. Reena appeared for the respondent.

3.1 The Ld. Counsel for the appellant submitted a Table of the various dues resulting from the impugned order.

TABLE

i. Amount of Customs Duty, if any, demanded for the period dispute.	Rs.92,18,355/-

ii. Amount of interest involved up to the date of the order appealed against.	Not Quantified (Section 28AA of the Customs Act)
iii. Amount of refund, if any, rejected or disallowed for the period in dispute	Not Applicable.
iv. Amount of fine imposed	Not Imposed.
v. Amount of penalty imposed	Rs.92,18,355/- under section 114A of the Customs Act, 1962.
vi. Amount of duty or fine or penalty or interest deposited. If so, inform the amount deposited under each head in the box below (A copy of the challan under which the deposit is made shall be furnished	Rs.6,91,377/- being 7.5% of the duty demand of Rs.92,18,355/- and available at Page A of the typed-set.

The Ld. Counsel submitted that:

A. The dispute is about the correct customs classification of imported goods, regardless of its form: whether they fall under sub-heading 4001 2910 (as self-assessed by the appellant) or 40011020 (as claimed by the department), involving five BE's.

B. Latex is the liquid obtained from rubber trees. It is commonly defined as a stable colloidal dispersion of a polymeric substance in a liquid medium.

C. 'Hevea' is a specialised rubber tree and produce latex with a higher solid (rubber) content than ordinary rubber trees.

D. The HSN and tariff heading 4001 2910 specifically recognise 'Hevea' as a distinct variety, not limited by shape or size but by type or kind.

E. Chapter 40.01 of the Harmonised system notes also states that normal rubber latex generally has 30-40% of rubber. Further it states that the rubber content of commercial latexes is usually between 60%-62%.

F. The term 'form' in the tariff heading refers not only to physical shape or size but also to variety, type, or kind. Thus, 'Hevea' natural rubber latex is a different variety of natural rubber latex.

G. A separate sub-heading has been carved out for 'Hevea' irrespective of its form (chapter 40, tariff heading 4001 29 10).

H. Sub-heading 400129 should be preferred for specific varieties like 'Hevea' over the general description under sub-heading 4001.10.

I. The BE's physically assessed by the department before the self-assessment regime was introduced, were for identical goods, under the identical description, under identical documents, from identical suppliers have been classified in respect of about 59 BE's under CTI 4001 2910 as Hevea, were not reviewed. The same practice was followed by the appellant while self-assessing the goods under the 5 impugned BE's. The facts were fully known to the department and hence there is no suppression of fact involved. The demand under extended period as per section 28(4) is untenable and is barred.

K. Even otherwise claiming a classification under a mistaken, but genuine (bona fide) belief is not an offence. He relied on the following judgments:

> i. In **Shree Ganesh International Vs Commissioner of C.Ex Jaipur** - 2004 (174) ELT 171, [Declaration in BE based on foreign suppliers documents not mis declaration under Section 111(m), therefore confiscation of goods or imposition of penalty not warranted].
>
> ii. In **Hindustan Lever Ltd. Vs CCC, Bombay** - 1996 (83) ELT 520, [Claiming classification and exemption under

a heading later revised by Customs does not constitute misdeclaration under Section 111(m)].

iii. **Super Electronics Vs Collector of Customs** 2003(153) ELT 254 SC; **Tata Exports Ltd. Vs UOI** 1989(39) ELT 49 Bom – [When similar goods have been repeatedly cleared under the same classification, importers have a bona fide belief that their declarations and exemptions are correct.]

iv. **Triveni Engineering Industries** - 015 (317) ELT 408 (All.).

L. The Ld. Counsel submitted that if the audit had felt the classification and assessment were not correct, the show cause notice could have been issued well within normal period. This case is clearly applicable for the present case for reasons that the appellants' unit was audited from 29.03.2012 to 31.03.2012, covering the period from April 2011 to March 2012 during which the subject BE's are covered.

The Ld. Counsel prayed that the impugned order may be set aside.

3.2 Ld. A.R. Smt. O.M. Reena reiterated the findings in the impugned order. Further she stated that even if the source of natural rubber latex is Hevea Brasiliensis tree, this has no connection or relevance for classifying the same as Hevea in the Tariff which is covered under natural rubber in other forms. The Latex Concentrate Quality Certificate pertaining to the imported goods as furnished by the importer mentions the presence of 0.68-0.72% of Ammonia and the solid rubber content as 61.18 which corroborates the classification of the impugned goods under 4001. The BE's were facilitated without verification of self-assessment or examination of goods, so verification never arose. Being an Accredited Client, the importer should have requested provisional assessment and submitted supporting

documents. Instead, they are wrongly shifting the onus to Customs. She hence prayed that the appeal may be rejected.

4. We have heard the parties and perused the appeal. We observe that the burden of proving that the classification of goods is not what the importer says is on revenue [See **Sound N Images Vs. Collector of Customs** – 2000 (117) ELT 538 (SC)].

5. Tariff entries under heading 4001, which are under dispute are as mentioned below:-

4001		Natural Rubber, Balata Gutta-percha, Guayule, Chicle and similar Natural Gumbs, in primary forms or in Plates, Sheets or Strip
4001.10	**-**	**Natural rubber latex, whether or not pre-vulcanized**
4001 1010	---	Pre-vulcanized
4001 1020	---	Other than pre-vulcanized
	-	**Natural rubber in other forms**
4001 2100	--	Smokes sheets
4001 2200	--	Technically Specified Natural Rubber (TSNR)
4001 29	--	Others
4001 2910	**---**	**Hevea**
4001 2920	---	Pale Crepe
4001 2930	---	Estate Brown crepe
4001 2940	---	Oil Extended Natural Rubber
4001 2990	---	Other
4001 3000	-	Balata, Gutta-percha, Guayule, chicle and similar natural gums

6. We find that the appellant has raised strong grounds for the SCN issued in this case being time barred. The dispute relates to the period from 01.04.2011 to 31.03.2012, while the SCN seeking to demand duty is dated 09.03.2015, hence it has been issued beyond the normal

period of 1 year. As regards a decision on the classification of the goods on merits, it has been held by the Hon'ble Allahabad High Court in **Commissioner Customs, Central Excise & Service Tax Vs M/S Monsanto Manufacturer Pvt. Ltd.** [2014 (35) STR 177 (ALL)], after citing the Hon'ble Supreme Court's judgment in **State Bank of India Vs B.S. Agricultural Industries** [AIR 2009 SUPREME COURT 2210], that once it is held that the demand is time barred, there would be no occasion for the Tribunal to enquire into the merits of the issues. Further the Hon'ble Supreme Court in **Commissioner Of Customs, Mumbai Vs M/S B.V. Jewels And Ors** [AIR 2005 SUPREME COURT 1231 / (2004) 172 ELT 3], held that "If, in reality, the CEGAT found that the action taken by the departmental authorities was beyond the period of limitation, **it could have disposed of the appeals before it only on that ground without examining the merits**". We hence take up this issue first.

7. We find that the impugned order has examined the issue of time bar which is extracted below.

> "36. The importer claims that the demand is time-barred. I find that their contention of time bar is not sustainable inasmuch as all the Bills of Entry covered under the notice have been facilitated by the RMS without assessment and examination of goods by the department. The importer has paid the duty as per their self-assessment and cleared the goods. It is only during the Post Clearance Audit by the jurisdictional Central Excise authorities the misclassification has been noticed. I find that the importer is a ACP client and a manufacturer of a branded product. Being so, they are well aware of the nature of the imported products. It is undisputed that the goods imported are 'Natural Rubber Latex Concentrate'. A simple glance of the tariff headings under CTH 400110 would make it abundantly clear that all natural rubber latex are covered under CTH 400110 and jump to CTH 40012910. I further hold that as per Explanatory notes to heading 4001, Natural Rubber Latex (whether or not pre-vulcanized) Natural Rubber Latex is the liquid secreted principally by rubber trees and, in particular, by the species

Hevea brasilliensis. This part includes **Stabilized or concentrated Natural Rubber Latex**.

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45. The importer claim that past practice cannot be ignored as the department has allowed so many clearances in the past. I find that the notice covers 5 Bills of Entry falling within the limit of extended period. I also find that none of the 5 Bills of Entry have been assessed by the department and goods are also not physically examined by the department to verify the correctness of the claim of the importer. Therefore, I find that their claim is not tenable as all the impugned 5 B/Es have been self-assessed by them and the clearances have been facilitated through the Risk Management System."

7. As per the General Rules for the Interpretation (GIR) of the First Schedule to the Customs Tariff Act, 1975, for legal purposes, classification of imported shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to Rule 2 to 6 of the GIR. Thus Rule 1 of the GIR provides that the classification of goods shall be determined according to the terms of the headings of the tariff and any relative Section notes or Chapter notes. Rules 2 to 6 provide the general guidelines for classification of goods under the appropriate sub-heading. Hence in the event that the goods cannot be classified solely on the basis of GIR 1, and if the headings and legal notes do not otherwise require, the remaining Rules 2 to 6 may then be applied in sequential order. We find that tariff heading 4001 2910 makes a specific reference to 'Hevea' under the heading 'Natural rubber in other forms'. Hence there could have been genuine divergence of views involving interpretation of law on the classification of the goods between the appellant and revenue.

8. Further the impugned order states that none of the 5 Bills of Entry have been assessed by the department and goods are also not

physically examined by the department to verify the correctness of the claim of the importer and hence the misclassification could be discovered only during Post Clearence Audit. Per contra the appellant has stated that the BE's physically assessed by the department before the self-assessment regime was introduced, were for identical goods, under the identical description, under identical documents, from identical suppliers and have been classified in respect of about 59 BE's under CTI 4001 2910 as Hevea, were not reviewed. Due to the differing claims it would be relevant to examine the details of the BE's as figuring in the Annexure to the SCN dated 05.03.2015, which is reproduced below.

Working Sheet for Calculation of Duty for Import of Natural Rubber by M/s. TTK LIG Ltd.						
B/E No. & Date	Net Weight (Kgs.)	Assessable Value (Rs.)	Cess on Rubber @ Rs.1.5/kg	Duty payable @ 70 + 0 + 3 + 4% for CTH 40011020 (Rs.)	Duty paid @ 20 + 0+ 3 + 4% under CTH 40012910	Diff Duty payable (Rs.)
3079219 / 29.03.11	20190	3386818	30285	2705329.53	861143	1844186.53
3088546 / 30.03.11	20090	3368927	30135	2691048.20	856594	1834454.20
3376685 / 02.05.11	20300	3365890	30645	2689159.72	859313	1829846.72
3377952 / 02.05.11	20430	3379617	30450	2699806.55	855822	1843984.55
3499029 / 13.05.11	20740	3425790	31110	2736935.63	871053	1865882.63
		16927042		13522279.62	4303925	9218354.62

9. The introduction of 'self-assessment' regime was by the Finance Bill, 2011. The said Bill became an Act immediately after it received the assent of the President on the 08.04.2011. As per the Customs 'Manual on Self-Assessment – 2011', 'self-assessment' has become the norm for assessment of Customs duty with effect from 08.04.2011, in respect of imported/ export goods. Boards Circular No.17/2011-Customs, dated: 08.04.2011, issued from F.No.450/26/2011-Cus.IV contained instructions regarding implementation of 'Self-Assessment'

in Customs. With the introduction of the scheme the responsibility for assessment shifted to the importer/ exporter, while the Customs officers would have the power to verify such assessments and make re-assessment, where warranted. Further Notification No. 79/2011 – Cus (N.T.), Dated 25.11.2011, came to prescribe the procedure to be followed for self-assessed BE's through the "Bill of Entry (Electronic Declaration Regulations), 2011", published in the Official Gazette on 25.11.2011 [which was issued in supersession of the "Bill of Entry (Electronic Declaration) Regulations, 1995"], and incorporated the changes made in the Finance Act 2011.

10. As per the Annexure to the SCN extracted above, it is seen that two BE's were filed prior to the enactment of the Finance Bill 2011 and all BE's were filed before the publication of the Bill of Entry (Electronic Declaration Regulations), 2011 in the Official Gazette. It is perturbing to note that the rival sides have not brought out the factual time lines, as noted above, ushering in the change in law on assessment which is so critical in understanding and deciding the issue. They have thus not been of help to this Bench in finding out the truth, and help administer justice with fairness and impartiality. This laxity in presenting facts is also observed in that while the Ld. A.A. records that none of the 5 impugned BE's were assessed by the department and the appellant speaks of the said 5 BE's carrying identical description etc as in the 59 BE's that preceded them and were assessed by the departmental officers. Both of which are not factually correct. When parties to a dispute raises an issue before the Tribunal, they should make a complete and accurate disclosure of all relevant facts and applicable law. While the Tribunal is presumed to know the law, it does not know

the facts, and it relies on the parties to present them candidly. Full and accurate disclosure is essential, as the Tribunal generally accepts parties' submissions at face value, assuming they are made honestly, in good faith and with clean hands.

11. Copies of the BE's filed during both the periods as examined by the Ld. A.A. have been filed along with the Appeal Memorandum. We find that B.E. 263785 dated 16.07.2009, filed during the period when the BE's were assessed by the officers, declares the goods imported from Malayasia as '**EXCELTEX D LATEX SUBSTAGE 60% DRC HEVEA BRAZILIEN**' with CTH shown as 4001 2910. The invoice accompanying the BE also carries the same description. The same details are found in 59 BE's assessed by the department and filed up to 12.01.2011, which is not disputed. BE 3079219 dated 29.03.2011 and BE 3088546 dated 30.03.2011 at pages 78 and 85 of Volume I of the appeal memorandum, which are two of the 5 BE's in dispute and pertains to the impugned period, declares the goods imported from Malayasia as '**EXCELTEX D LATEX RUBBER LATEX CONCENTRATE**' and indicates the CTH 4001 2910. Hence unlike what was stated by the appellant, the description is not identical to that declared during the earlier period. However the 'Latex Concentrate Quality Certificate', issued by the Technology & Quality Control Centre, Malayasia, accompanying the consignment shows the 'dry rubber content' as 60% min. BE No 3376685 dated 02.05.2011, 3377952 dated 02.05.2011 and 3499029 dated 13.05.2011 filed after the introduction of self-assessment carries identical description of the goods. Hence even though the description in the impugned BE's are not identical to the 59 BE's filed earlier, it is observed that 2 of the 5 BE's have been filed

before self-assessment came into force and the other 3 BE's carry the same description and details. All the 5 BE's, as noted earlier were filed before the Bill of Entry (Electronic Declaration Regulations), 2011, incorporating the changes in the Finance 2011, was published in the Official Gazette on 25.11.2011. This being so even without making a reference to the 59BE's, it cannot be said that revenue was not aware that the appellant was importing Rubber latex concentrate with the dry rubber content being 60% and of Hevea origin, when the departmental officers themselves have assessed and cleared at least two such consignments with the same description before the self-assessment regime came into force. Further the 5 BE's though carrying a partial change in description show the Dry Rubber Content (DRC) as 60% and the goods have not been shown by revenue to be different from the 59 BE's filed earlier.

12. Although we have noted our dissatisfaction with the manner in which the rival parties have presented the factual matrix, we observe that the impugned order places particular emphasis on the importer-appellant's status as an ACP client. It is pertinent to record that the erstwhile ACP scheme has, with effect from 23.08.2011, been subsumed into the Authorized Economic Operator (**AEO**) programme. The underlying objective of both schemes is to extend assured facilitation to importers who possess a consistent record of compliance and fulfil the prescribed eligibility criteria. Such accreditation is conferred only upon select importers and exporters who have demonstrably exhibited adherence to the statutory requirements administered by the Customs authorities. In this backdrop, the appellant's declarations and past clearances warranted a more rigorous

and careful scrutiny by the adjudicating authority. An importer enjoying ACP/AEO status, having been previously verified as compliant and maintaining an unblemished record, stands to forfeit that status—and the statutory facilitation attendant upon it—if subsequently found to have engaged in conduct resulting in revenue loss. It is therefore incumbent upon the authorities to ensure that any charge of misconduct is weighed with circumspection and supported by cogent, credible evidence before it is affirmed. Furthermore, the allegation of wilful misstatement does not turn upon the correctness of the classification adopted by the assessee. As enunciated by the Hon'ble Supreme Court in **Uniworth Textiles Ltd. Vs Commissioner of Central Excise, Raipur**, 2013 (288) E.L.T. 161 (S.C.), a finding of wilful misstatement requires the presence of 'a positive act which betrays a negative intention of wilful default'. With no clear intention to commit a blameworthy act being demonstrated, mere interpretational differences cannot, sustain such a serious allegation.

13. We find that the impugned order has not distinguished the products of the earlier period to be different. Nor can a genuine divergence of views involving interpretation of law on the classification of the goods be ruled out. Hence when the burden of proving the classification is on the department and no negative intention on the part of the appellant could be established, a charge of wilful misstatement, suppression of fact etc cannot be sustained. The SCN is hence time barred.

14. In the circumstances we do not examine the issue on merits in the light of the Constitutional Court judgments cited above.

15. We accordingly set aside the impugned order and allow the appeals on the issue of time bar. The appellant is eligible for consequential relief as per law. The appeal is disposed of accordingly.

(Order pronounced in open court on 03.02.2026)

Sd/-	Sd/-
(**AJAYAN T.V.**)	(**M. AJIT KUMAR**)
Member (Judicial)	Member (Technical)

Rex