सीमाशुल्क अग्रिम विनिर्णय प्राधिकरण
CUSTOMS AUTHORITY FOR ADVANCE RULINGS
नवीन सीमाशुल्क भवन, बेलार्ड इस्टेट, मुंबई - ४०० ००१
NEW CUSTOM HOUSE, BALLARD ESTATE, MUMBAI - 400 001
E-MAIL: cus-advrulings.mum@gov.in

The 5th Sep, 2023
Ruling No. CAAR/MUM/ARC/61/2023
in
Application No. CAAR/CUS/APPL/32/2023 - O/o Commr-CAAR-MUMBAI

Name and address of the applicant:	M/s. Bharat Balloon House, No.92 (63) 1st Floor, Narayana Mudali Street, Sowcarpet Chennai 600 079
Commissioner concerned:	The Commissioner of Customs, Chennai-II, Custom House, 60, Rajaji Salai Chennai 600 001
Present for the applicant:	Shri Hari RadhaKrishnan, Advocate, M/s. Agol Associates, Chennai.
Present for the Department:	None

Ruling

M/s. Bharat Balloon House (having IEC No.0401007006 and hereinafter referred to as 'the applicant', in short) filed an application (CAAR-1) for advance ruling before the Customs Authority for Advance Rulings, Mumbai (CAAR in short). The said application was received in the secretariat of the CAAR, Mumbai on 27.02.2023 along with its enclosures in terms of Section 28H (1) of the Customs Act, 1962 (hereinafter referred to as the 'Act'). The applicant is seeking advance ruling on the classification of 'Foil Balloons' (hereinafter referred to as the 'subject item') which they intend to import from China.

2. The applicant has submitted that they are a partnership firm involved in the business of import, trading and re-packing of Toy Balloon made of Natural Rubber Latex. The applicant

is intending to import "Foil Balloon" from China, which are used for party decoration and for entertainment purposes. These balloons ordinarily have shiny reflective surfaces and are often printed with colour pictures and patterns for gifts and parties. They are used for decoration for various events such as birthday, and marriage. The said foil balloons are available in various kinds. Some are of the shape of alphabets, numbers and other shapes such as heart, star etc. The said foil balloons are not used as toys but are only used for decoration and entertainment purposes. The applicant is of the view that the subject item is classifiable under heading CTH 9505 9090 under the heading "other" and the main heading deals with festive, carnival and other entertainment articles, including conjuring tricks and novelty jokes.

3. The applicant submitted that in their opinion the subject items are rightly classifiable under CTH 9505 9090 and summarised the grounds for their opinion as under:-

3.1 The classification of the product "foil balloon" would fall under heading 9505 which reads as under:

9505 Festive, carnival or other entertainment articles, including conjuring tricks and novelty jokes.

9505 10 00	- Articles for Christmas festivities
9505 90	- *Other:*
9505 9010	--- Magical equipments
9505 9090	--- Other

3.2 The HSN Explanatory Notes to the heading 9505 states that the heading 95.05 covers the following goods.

A) Festive, carnival or other entertainment articles, which in view of their intended use are generally made of non-durable material. They include:

(1) Decorations such as festoons, garlands, Chinese lanterns, etc., as well as various decorative articles made of paper, metal foil, glass fibre, etc., for Christmas trees (e.g., tinsel, stars, icicles), artificial snow, coloured balls, bells, lanterns, etc. Cake and other decorations (e.g., animals, flags) which are traditionally associated with a particular festival are also classified here.

(2) Articles traditionally used at Christmas festivities, e.g., artificial Christmas trees (these are sometimes of the folding type), nativity scenes, Christmas crackers, Christmas stockings, imitation yule logs.

(3) Articles of fancy dress, e.g., masks, false ears and noses, wigs, false beards and moustaches (not being articles of postiche - heading 67.04), and paper hats. However, the heading excludes fancy dress of textile materials, of Chapter 61 or 62.

(4) Throw-balls of paper or cotton-wool, paper streamers (carnival type), cardboard trumpets, "blow-outs", confetti, carnival umbrellas, etc.

3.3 The HSN Explanatory Notes read with the tariff heading 9505 makes it very clear that festive, carnival or other entertainment articles get classified under heading 9505. The Explanatory Note also clarifies that decorations used to decorate rooms such as garlands, lanterns etc., and decorative articles for Christmas trees such as coloured balls, animals and other figures are classifiable under heading 9505. The goods in question viz., foil balloons are also of the category of goods mentioned in the heading 9505 and as explained in the HSN Explanatory Notes.

3.4 The applicant further submitted that the goods cannot be considered to be a toy balloon which ordinarily falls under heading 9503 of the Customs Tariff Act, 1975. Due to the fragile nature of the foil balloons and its actual use, the goods cannot be used by children as a toy. In this respect the applicant submitted that the Indian Standard applicable for toys is given in IS 9873 (Part 1):2019. The said Indian Standard categorically states that the following products are not included within the scope of the said Indian Standard.

a) bicycles, except for those considered to be toys, i.e., those having a maximum saddle height of 435 mm (see Clause E.1);
b) slingshots; NOTE "Slingshots" are also known as "catapults".
c) darts with metal points;
d) home and public playground equipment;
e) compressed air- and gas-operated guns and pistols (see Clause E.1);
f) kites (except for the electric resistance of their strings, which is included);
g) model kits, hobby and craft items, in which the finished item is not primarily of play value;
h) sporting goods and equipment, camping goods, athletic equipment, musical instruments and furniture; however, toys which are their counterparts are included.

<u>**It is recognized that there is often a fine distinction between, for example, a musical instrument or a sporting item and its toy counterpart. The intention of the manufacturer or distributor, as well as normal use and reasonably foreseeable abuse, determines whether the item is a toy counterpart or not;**</u>

i) models of aircraft, rockets, boats and land vehicles powered by combustion engines; however, toys which are their counterparts are included (see Clause E.1);
j) collectible products not intended for children under 14 years of age;
k) holiday decorations that are primarily intended for ornamental purposes;
l) aquatic equipment intended to be used in deep water, swimming-learning devices and flotation aids for children such as swim-seats and swim-aids;
m) toys installed in public places (e.g., arcades and shopping centres);
n) puzzles having more than 500 pieces or without a picture, for specialists;
o) fireworks including percussion caps, except percussion caps specifically designed for toys;
p) products containing heating elements intended for use under the supervision of an adult in a teaching context;
q) steam engines;

r) video toys that can be connected to a video screen and operated at a nominal voltage greater than 24 V;
s) babies' pacifiers (dummies);
t) faithful reproduction of firearms;
u) electric ovens, irons or other functional products operated at a nominal voltage greater than 24 V;
v) bows for archery with an overall relaxed length exceeding 120 cm;
w) fashion jewellery for children (see Clause E.1)

From the exclusion given in the Indian Standard, reproduced above, it is apparent that the actual use of the item and the intention of the manufacturer and distributor is a relevant criteria. If the item in question is not manufactured or distributed for use as a toy, then the Indian Standard does not apply. It is pertinent to note that as per Sl. No. (k) above, holiday decorations that are primarily intended for ornamental purpose have been excluded from the Indian Standards. Therefore, the test for determining whether the goods are classifiable under heading 9503 as a toy or under the heading 9505 as a decorative article is the end use.

3.5 In support of their contention, the applicant have cited the following case laws:

(a) The Hon'ble Supreme Court in the case of Collector of Customs Vs. Kumudam Publications [1997 (96) ELT 226 (SC)] has held that "***it is not entirely correct to say that the end use or function of the goods is irrelevant to decide the question of classification***". A three Judge Bench of the Hon'ble Supreme Court had also relied upon the function and end use in determining the classification in Indian Tool Manufactures Vs. Asst. Collector of Central Excise, Nasik & Others reported in 1994 (74) ELT 12 (SC).

(b) The Hon'ble Supreme Court in the case of Commissioner of Central Excise Vs. Wockhardt Life Sciences Ltd reported in 2012 (277) ELT 299 (SC) had held that "the functional utility and predominant usage of the commodity must be taken into account apart from the understanding in common parlance to determine the correct classification of the product".

3.6 The applicant submitted that Rule 4 of the General Rules for the Interpretation of the Import Schedule clearly states that the goods which cannot be classified in accordance with Rule 1 to 3 shall be classified under heading appropriate to the goods to which they are most akin. Therefore, even by following the kinship rule, the goods under consideration, viz., "foil balloon" are of the category/type mentioned in the HSN Explanatory Notes, which are used as decorations to decorate rooms.

3.7. The applicant further submitted that even by applying the common parlance test, the goods in question cannot be termed to be a 'toy'. The goods are not sold as a toy in the market and are only sold for decorative purposes. The applicant humbly submitted that this Hon'ble Authority (CAAR, Mumbai) may take judicial notice of this fact and prayed that the Hon'ble

Authority (CAAR, Mumbai) may be pleased to hold that the subject goods are classifiable under CTH 9505 9090 and thus render justice.

4. The applicant in their CAAR-1 indicated that they intend to import the impugned goods under the jurisdiction of Office of the Commissioner of Customs, Chennai-II, Custom House, 60, Rajaji Salai, Chennai- 600 001 (hereinafter referred to as the 'Jurisdictional Commissioner of Customs'). The application was forwarded to the 'Jurisdictional Commissioner of Customs' in terms of the Section 28 (I)(1) of the Customs Act, 1962 for their comments on classification of subject goods i.e. 'Foil Balloons' and call upon them to furnish relevant records.

5. Further, The 'Jurisdictional Commissioner of Customs' sent the comments to CAAR, Mumbai vide letter dated 31.03.2023. They submitted that:-

Chapter Heading 9505 covers :

A. Festive, carnival or other entertainment articles, which in view of their intended use are generally made of non-durable material. The heading excludes statuettes, statues and the like of a kind used for decorating places of worship. The heading also excludes articles that contain a festive design, decoration, emblem or motif and have a utilitarian function, e.g., tableware, kitchenware, toilet articles, carpets and other textile floor coverings, apparel, bed linen, table linen, toilet linen, kitchen linen.
B. Conjuring tricks and novelty jokes, e.g., packs of cards, tables, screens and containers, specially designed for the performance of conjuring tricks; novelty jokes such as sneezing powder, surprise sweets, water-jet buttonholes and "Japanese flowers".

From the above it is observed that the heading 9505 does not cover the item Balloons of any description i.e. toy balloon, party balloon, foil balloon etc. Further, printed foil balloons are generally identified as toys in common parlance and hence, the goods i.e. Foil Balloons of different designs and colours are toy balloons which falls under Heading 9503. It was specifically mentioned in the Para (D)(vii) of Explanatory Notes to Chapter Heading 9503 and in S.No.284 of Notification No. 50/2017 dated 30.06.2017 that toys balloons are rightly classifiable under Heading 9503.

Further, it is pertinent to mention the Explanatory Notes, (D)(vii) to Chapter Heading 9503, which is as under:

9503 Tricycles, scooters, pedal cars and similar wheeled toys; dolls; carriages; dolis; other toys; reduced-size (scale) models and similar recreational models, working or not; puzzles of all kinds.

A. Wheeled toys.
B. Dolls' carriages (e.g., strollers), including folding types.
C. Dolls.
D. Other toys.

This group covers toys intended essentially for the amusement of persons (children or adults), however, toys which, on account of their design, shape or constituent material, are

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identifiable as intended exclusively for animals, e.g., pets, do not fall in this heading, but are classified in their own appropriate heading.

This group includes: All toys not included in (A) to (C). Many of the toys are mechanically or electrically operated.

These include:

i). Toys representing animals or non-human creatures even if possessing predominantly human physical characteristics (e.g., angels, robots, devils, monsters), including those for use in marionette shows.

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vi). Non-electric toy motors, toy steam engines, etc.

vii). Toy balloons and toy kites.

In this regard, Para 2 of Analytics Report 46/2021-22 dated 29.10.2021 issued by NCTC (National Customs Targeting Centre) Mumbai may also be seen, wherein they have stated that balloons are of various types such as:

i. Balloons made of latex/rubber or foil /mylar or plastic, also commonly known as party balloons, decoration balloons, and toy balloons, which are classifiable under CTH 9503;

ii. Balloons used in aeronautics or metrology, classifiable which are classifiable under CTH 8801;

iii. Balloons used for medical purposes, classifiable under CTH 9018.

5.1 The 'Jurisdictional Commissioner of Customs' submitted that in view of the description provided in customs tariff, Explanatory notes of CTH 9503 and analytics report of NCTC it is clear that Balloons made of Latex/ rubber or foil or plastic commonly known as party balloons are classifiable under CTH 9503 and more particularly under CTH 95030090.

6. A personal hearing in the matter was held on 16.05.2023 through virtual mode. Shri. Hari Radhakrishnan, Advocate, represented the case for M/s. Bharat Balloon House. The applicant reiterated the points submitted in the application and requested for the ruling regarding the accurate classification of subject goods i.e. 'Foil Balloons'.

7. Further, the applicant sent the Rejoinder to CAAR, Mumbai in respect of the comments of the 'Jurisdictional Commissioner of Customs' wherein they submitted that:-

i. With regard to the first contention of the Department ('Jurisdictional Commissioner of Customs') that printed foil balloons are generally identified as toys in the common parlance and therefore, foil balloons of different designs are toy balloons falling under heading 9503, it is submitted that the Webster's New World Dictionary defines a toy as any article to play with especially a play thing for children. The Toys (Quality Control) Order, 2020, states that the foil applies to toys (product or material) designed or clearly intended, whether are not exclusively, for use in play by children under fourteen (14) years of age. The test, therefore, is whether the foil articles of various shapes are products/materials that are intended to be used for play by children. The answer is a categorical 'NO' for the reason that these foil articles are intended and used only for decorative purposes in events and functions and are not intended to be used as toys.

ii. In common parlance also these foil articles cannot be regarded as toys. Judicial notice may kindly be taken of the fact that these foil articles are not purchased in the market for the purpose of play by children but are only purchased for decorative purposes. Therefore, the contention of the Department ('Jurisdictional Commissioner of Customs') that they are identified as toys in the common parlance, is clearly misconceived and without any evidence.

iii. The toy balloons mentioned in paragraph (D)(vii) of the Explanatory Notes to heading 9503 refer to the rubber/latex balloons which are commonly found for sale in beaches and parks. It may be noted that articles made of foil are not sold in such public places since they cannot be used as play articles as they are very fragile and are therefore, not intended to be sold as a toy. On the other hand, the HSN Explanatory Notes to the heading 9505 clearly states that the heading includes articles made of paper, foil etc. which are used as decoration purposes. The foil articles which are proposed to be imported by the applicant are to be used for decoration in birthday function, marriage function etc., and therefore, clearly fit into the explanation provided in the Explanatory Notes to heading 9505.

iv. The Department ('Jurisdictional Commissioner of Customs') in their objections dated 31.03.2023 have relied upon an Analysis Report dated 29.10.2021 issued by National Customs Targeting Centre, Mumbai. The said report has no statutory or legal force and is an internal document of the Department, which is not binding on this Hon'ble Authority (CAAR, Mumbai). Further, the said Analytics Report does not take into account the common parlance test as indicated above as well as the HSN explanatory notes to the heading 9505. Therefore, the said report has no evidentiary value in law.

7.1 For the reasons mentioned in the application in the Advance Ruling and for the reasons mentioned above the applicant humbly prayed that this Hon'ble Authority (CAAR, Mumbai) may rule that the goods are classifiable under heading

9505 9090 and thus render justice.

8. Another personal hearing in the matter was held on 22.08.2023 through virtual mode. Shri. Hari Radhakrishnan, Advocate, represented the case for M/s. Bharat Balloon House. He again explained the points submitted in the application & rejoinder and requested for the ruling regarding the accurate classification of subject goods i.e. 'Foil Balloons' citing FINAL ORDER NO...75483-75484/2023 dated 17.05.2023 of CESTAT, Kolkata in respect of Customs Appeal No.75637 to 75640 of 2022 in the matter of the Commissioner of Customs (Port), Kolkata 15/1, Strand Road, Kolkata-700001 versus M/s Ess Enn Impex C-17, Wazirpur Industrial Area, Delhi-110052 & M/s S.K.International C-17, Wazirpur Industrial Area, Delhi-110052.

9. I have considered all the materials placed before me in respect of the subject goods. I have gone through the submissions made by the applicant during the personal hearings as well as the response received from the 'Jurisdictional Commissioner of Customs'. The subject item for which advance ruling has been sought; its characteristics, functionality and utility etc. are broadly discussed in the foregoing paras. Therefore, I proceed to pronounce a ruling on the basis of information available on record as well as existing legal framework having bearing on the classification of the subject goods i.e. 'Foil Balloons'. The issue before me is the classification of 'Foil Balloons' which the applicant intends to import from China.

10. I find that "Foil Balloons" are used for party decoration and for entertainment purposes. These balloons ordinarily have shiny reflective surfaces and are often printed with colour pictures and patterns for gifts and parties. "Foil Balloons" are used for decoration for various events such as birthday, marriage, new-year eve celebration and many other joyous programmes and they are available in various shapes such as alphabets, numbers, heart, star etc. The said foil balloons are not used as toys but are only used for decoration and entertainment purposes. "Foil Balloons" are very fragile and non-durable goods which are not purchased in the market for the purpose of play by children and they are used like festoons also as explained in the application and also shown in the pictures attached thereto. They are decorated on the wall on various joyous occasions.

11. I find that the rejoinder of applicant that Toy Balloons mentioned in paragraph (D)(vii) of the Explanatory Notes to heading 9503 refer to latex/rubber balloons is correct and grounded in facts. I am also of the view that "Foil Balloons" made of Nylon/HDPE don't deserve classification under the heading 9503 as they are not purchased in market as toys for the purpose of play by children, whereas, they are purchased as decorative items.

I agree with the rejoinder of the applicant that the contention of the Department ('Jurisdictional Commissioner of Customs') that "Foil Balloons" are identified as toys in the common parlance is clearly misconceived and without any evidence; said Analytics Report of NCTC, Mumbai does not take into account the common parlance test as indicated above as well as the HSN explanatory notes to the heading 9505. I am of the view that if the subject goods i.e. "Foil Balloons" are classified under the heading 9503 as per the paragraph (D)(vii) of the Explanatory Notes thereto, it would be similar to completely disregarding the fact "Foil Balloons" are purchased in the market for the purpose of decoration or entertainment.

12. Before deciding on the issue, let me deliberate on the legal framework prescribed in Customs Tariff Act, 1975, Chapter/ Section notes along with HSN explanatory notes.

Relevant portion of CTH 9505 is reproduced below for ease of reference:-

9505 Festive, carnival or other entertainment articles, including conjuring tricks and novelty jokes.

9505 10 00	- Articles for Christmas festivities
9505 90	- *Other:*
9505 9010	— Magical equipments
9505 9090	--- Other

From the above and also taking into account the Explanatory Notes to the chapter heading 9505, I agree with belief of the applicant that the subject goods are rightly classifiable under heading CTH 9505 9090 under the heading "other" and the main heading deals with festive, carnival and other entertainment articles, including conjuring tricks and novelty jokes.

13. Further, as per the FINAL ORDER NO. 75483-75484/2023 dated 17.05.2023 of CESTAT, Kolkata, the CESTAT has held that decoration foil balloons do not fall under the purview of BIS. CESTAT while arriving at this decision has relied upon a clarification from the Department of Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India vide F.No.14031/47/2020-CI dated 24.02.2022. As per the said clarification the Indian Standard IS Registration i.e. any product or material designed or clearly intended for use in play by children under 14 years of age, includes requirements for safety of toy balloons as well. These requirements include the possible choking hazards presented by pieces of broken latex balloons or by mouthpieces fitted to balloons. Further, it was held that the impugned goods imported by the respondent under HSN 39269099/95059090 are not covered under Toy Control Order, 2020. Thus, from the perusal of above cited order of CESTAT, Kolkata it is clear that subject goods "Foil Balloons" cannot be considered as toys and no BIS Registration is required to import the same. Further, CESTAT, Kolkata has held NCTC report inconclusive.

14. In view of the foregoing discussions and findings, I rule that if the subject goods i.e. "Foil Balloons" are made of Nylon/HDPE not of Latex/Rubber and imported for the purpose of party decoration or entertainment, merit classification under the heading 9505 and specifically under subheading **9505 9090** of the First Schedule to the Customs Tariff Act, 1975.

05/09/2023

(SAMAR NANDA)

Customs Authority for Advance Rulings, Mumbai

F.No. CAAR/CUS/APPL/32/2023-O/o Commr-CAAR-Mumbai **Dated: ……….**

This copy is certified to be a true copy of the ruling and is sent to: -

1. M/s. Bharat Balloon House, No.92 (63) 1st Floor, Narayana Mudali Street, Sowcarpet, Chennai 600 079.
   Email : bharatballoonhouse@gmail.com

2. Office of the Commissioner of Customs, Chennai-II, Custom House, 60, Rajaji Salai, Chennai- 600 001.
   Email: commr2-cuschn@gov.in, chennai-importoffice@gov.in

3. The Customs Authority for Advance Rulings, 5th Floor, NDMC Building, Yashwant Place, Satya Marg, Chanakyapuri, New Delhi-110021.
   Email: cus-advrulings.del@gov.in

4. The Principal Chief Commissioner of Customs, Mumbai Customs Zone-I, Ballard Estate, Mumbai -400001.
   Email: ccu-cusmum1@nic.in

5. The Commissioner (Legal), CBIC Offices, Legal/CX.8A, Cell, 5th floor, Hudco Vishala Building, C-Wing, Bhikaji Cama Place, R. K. Puram, New Delhi – 110066.
   Email: anishgupta.irs@gov.in, commr.legal-cbec@nic.in

6. The Member (Customs), Central Boards of Indirect Taxes & Customs, North Block, New Delhi-110001.
   Email: mem.cus-cbec@nic.in

7. The Webmaster, Central Boards of Indirect Taxes & Customs.
   Email: webmaster.cbec@icegate.gov.in

8. Guard file.

06/9/2023

(Vishal M. Sanap)
Commissioner (in-situ) & Secretary
Customs Authority for Advance Rulings,
Mumbai

सीमाशुल्क अग्रिम विनिर्णय प्राधिकरण, मुंबई
Customs Authority For Advance Rulings, Mumbai

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