

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

REGIONAL BENCH – COURT No. III

Customs Appeal No. 40001 of 2014

(Arising out of Order-in-Appeal C.Cus.No. 1601/2013 dated 19.11.2013 passed by Commissioner of Customs (Appeals), No. 60, Rajaji Salai, Custom House, Chennai – 600 001)

M/s. Page Industries Ltd.

...Appellant

Abbaiah Reddy Industrial Area,
Jockey Campus,
6/2 & 6/4, Hongasandra, Begur Hobli,
Bangalore – 560 068.

Versus

Commissioner of Customs

...Respondent

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

With

Customs Appeal No. 40002 of 2014

(Arising out of Order-in-Appeal C.Cus.No. 1602/2013 dated 19.11.2013 passed by Commissioner of Customs (Appeals), No. 60, Rajaji Salai, Custom House, Chennai – 600 001)

M/s. Page Industries Ltd.

...Appellant

Abbaiah Reddy Industrial Area,
Jockey Campus,
6/2 & 6/4, Hongasandra, Begur Hobli,
Bangalore – 560 068.

Versus

Commissioner of Customs

...Respondent

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

With

Customs Appeal No. 41914 of 2014

(Arising out of Order-in-Appeal C.Cus.No. 1118/2014 dated 30.06.2014 passed by Commissioner of Customs (Appeals), No. 60, Rajaji Salai, Custom House, Chennai – 600 001)

M/s. Page Industries Ltd.

...Appellant

Abbaiah Reddy Industrial Area,
Jockey Campus,
6/2 & 6/4, Hongasandra, Begur Hobli,
Bangalore – 560 068.

Versus**Commissioner of Customs**

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

...Respondent

With

Customs Appeal No. 40348 of 2014

(Arising out of Order-in-Appeal C.Cus.No. 1602/2013 dated 19.11.2013 passed by Commissioner of Customs (Appeals), No. 60, Rajaji Salai, Custom House, Chennai – 600 001)

Commissioner of Customs

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

...Appellant**Versus****M/s. Page Industries Ltd.**

Abbaiah Reddy Industrial Area,
Jockey Campus,
6/2 & 6/4, Hongasandra, Begur Hobli,
Bangalore – 560 068.

...Respondent

And

Customs Appeal No. 40349 of 2014

(Arising out of Order-in-Appeal C.Cus.No. 1601/2013 dated 19.11.2013 passed by Commissioner of Customs (Appeals), No. 60, Rajaji Salai, Custom House, Chennai – 600 001)

Commissioner of Customs

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

...Appellant**Versus****M/s. Page Industries Ltd.**

Abbaiah Reddy Industrial Area,
Jockey Campus,
6/2 & 6/4, Hongasandra, Begur Hobli,
Bangalore – 560 068.

...Respondent**APPEARANCE:**

For the Assessee : Shri N. Nagaraj, Advocate

For the Revenue : Shri R. Rajaraman, Assistant Commissioner / A.R.

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

DATE OF HEARING : 13.09.2023

DATE OF DECISION : 01.02.2024

FINAL ORDER Nos. 40112-40116 / 2024

Order :- [Per Mr. VASA SESHAGIRI RAO]

Customs Appeal Nos. C/40001 and 40002/2014 have been filed by the Assessee being aggrieved by the Orders-in-Appeal Nos. 1601/2013 and 1602/2013 both dated 19.11.2013 passed by the Commissioner of Customs (Appeals) who have set aside the Order-in-Original No. 22250/2013 dated 25.10.2013 and the assessment order passed by the Assistant Commissioner, Group-VI who had classified Sea Squad Swim Seat and Swimming Aids-Arm Band imported by the Assessee under CTH 39269099 rejecting the classification adopted by them under CTH 95062900 and thereby classifying the imported goods under CTH 95069990. Customs Appeal No. C/41914/2014 have been filed by the Assessee being aggrieved by the Order-in-Appeal No. 1118/2014 dated 30.06.2014 passed by the Commissioner of Customs (Appeals). The appeals in C/40348 & 40349/2014 have been filed by the Department against the said Orders-in-Appeal dated 19.11.2013.

2. All these appeals involve the issue of classification of the imported goods in accordance with the provisions of Customs Tariff Act, 1975 and so being taken up together for disposal by this common order.

3. Brief facts of these appeals are that the Assessee, who is a manufacturer of garments under Chapter Heading 62 and 63 of Central Excise Tariff is also trading in Speedo brand of sports items have filed Bills of Entry Nos. 243069 dated 15.06.2013 and 3552396 dated 17.10.2013 for the clearance of imported goods declared as Swimming aids/ Roll up arm band and sea squad swim seat claiming the classification under CTH 95062900 with the benefit of Customs Notification No. 12/2012-SI.No. 503 and C.Ex. Notification No. 1/2011-SI.No. 126 and Customs Notification No. 21/2012-SI.No. 1 with effective rate of duty (BCD-Nil & CVD-6%). However, the Original Adjudicating Authority classified the impugned goods under CTH 39269099 (BCD-10% and CVD-12%) for assessment under merit rate of duty. Aggrieved by the impugned Order-in-Original/ assessment order, the Assessee preferred an appeal before the Commissioner (Appeals) who partly allowed the appeal by setting aside the Order-in-Original/ assessment order but reclassified the imported goods under 95969990 (BCD-10% and CVD-6%). Hence these present appeals came before this forum. The Department also challenged the above Orders-in-Appeal *vide* appeal Nos. C/40348 & 40349/2014.

4.1 Further, Customs Appeal No. C/41914/2014 have been filed by the Assessee being aggrieved by the Order-in-Appeal No. 1118/2014 dated 30.06.2014 passed by Commissioner (Appeals) dismissing the appeal filed by the Assessee against the assessments made by the Assistant Commissioner, Group-VI with regard to the classification of Sea Squad Swim Seat, Swimming goggles, fabric hat, Swimming Aids-roll up Arm Band

imported by the Assessee under CTH 39269099 rejecting the declaration made by them under CTH 95062900/90049090/65050090/65069100 and classified the Sea Squid Swim Seat, Headgears, Swimming Goggles and Fabric hats under CTH 95069990 and Technical and Power Paddles under 95062900.

4.2 In this case, the Assessee filed Bills of Entry Nos. 9679681 dated 26.03.2013 and 992101 dated 23.04.2013 for clearance of import goods declared as "Swimming aids/ Roll up arm band; sea squad swim seat, swimming goggles, head gear of rubber or plastics, fabric hat, bio-fuse fin, tech paddle and claimed classification mostly under 95062900 with the benefit of Customs Notification No. 12/2012- Sl.No. 503 and Central Excise Notification No. 1/2011-Sl.No. 126 and Customs Notification No. 21/2012-Sl.No.1 with effective rate of duty (BCD-Nil & CVD-6%). However, the Original Adjudicating Authority has not accepted the classification and denied the benefit of Notifications and assessed the imported goods under CTH 39269099 (BCD-10% and CVD-12%). Aggrieved, the Assessee filed appeals before the Commissioner (Appeals) who dismissed the appeal as premature with liberty to pursue the same with the assessment group. *Vide* Order-in-Original No. 23602/2014, the Assistant Commissioner, Group-VI classified all the goods imported under CTH 39269099. Aggrieved, the Appellants went on appeal before the Commissioner (Appeals) who *vide* Order-in-Appeal No. 1118/2014 dated 30.06.2014 classified the Sea Squid Swim Seat, Headgears, Swimming Goggles and Fabric hats under CTH 95069990 and Technical and Power Paddles under 95062900. Hence, the present appeals filed before this forum.

5. For better understanding of the issue the factual details have been reproduced below in a tabular format:

| Sl. No. | Appellant Appeal No. | Department Appeal No. | BOE No. & Date | Declaration in BOE | Classification Claimed by Appellant with Rates | Classification confirmed in the OIO/ Assessment order | Classification upheld by the Commissioner (Appeals) |
|---------|----------------------|-----------------------|--------------------------|---|---|--|---|
| 1 | C/40001/2014 | C/40349/2014 | 2430369 dated 15.06.2013 | 1. General Sports Equipment- Sea Squad swim Seat 2. Swimming Aids/ Arm Band/Seat Squad Arm band | 1. 95062900 2. 95062900 BCD-Nil CVD-6% | 1.39269099 2. 39269099 BCD-10% CVD- 12% | 1. 95069990 2.95069990 BCD-10% CVD-6% |
| 2 | C/40002/2014 | C/40348/2014 | 3552396 dated 17.10.2013 | 1.Swimming Aids/ Roll up Arm Band 2. General Sports Equipment- Sea Squad swim Seat | 1. 95062900 2. 95062900 BCD-Nil CVD-6% | 39269099 (as per assessment order) BCD-10% CVD- 12% | 1. 95069990 2.95069990 BCD-10% CVD-6% |
| 3 | C/41914/2014 | ----- | 9679681 dated 26.03.2013 | 1. General Sports Equipment- Sea Squad swim Seat 2. Swimming Aids- Seat Squad Arm band | 95062900 BCD-Nil CVD-6% | 39269099 BCD-10% CVD- 12% | 95069990 BCD-10% CVD-6% |
| | | | 9921101 dated 23.04.2013 | 1.Swimming Goggles of various Types 2. Sea Squad Swim Bag Seat 3. Other headgear of rubber /Plastics 4.Fabric Hats- Pace Cap 5. Other Headgear of rubber or Plastics 6. Swimming Aids- Bio Fuse fin 7. Swimming Aids- Tech Paddle-Power | 90049090 95062900 BCD-Nil CVD-6% 65069100 65050090 65050090 95062900 95062900 | 39269099 39269099 39269099 39269099 39269099 39269099 39269099 | 95069990 95069990 95069990 95069990 95069990 95062900 BCD-Nil |

| | | | | | | | |
|--|--|--|--|-------------------|----------|----------|----------|
| | | | | Paddle | | | CVD-6% |
| | | | | 8. Other Head | 65069100 | 39269099 | 95069990 |
| | | | | gear of rubber of | | BCD-10% | BCD-10% |
| | | | | Plastics- Sea | | CVD- 12% | CVD-6% |
| | | | | Squad Character | | | |
| | | | | cap | | | |

6. The contentions of the appellant are summarised as given below:-

- i. That the impugned order has totally erred in classifying sea squad swim seats, bio-fuse fitness fin and arm bands under 95069990 as they were meant for recreation of babies/ kids and the classification of these items under the category of outdoor games under CTH 95069990 is totally incorrect. CTH 95069990 covers “Articles and Equipment for general, physical exercise, gymnastic or athletic”. Once having agreed that the Swim squad seats, bio fuse fitness fin and arm bands meant for kids to remain afloat in water, it cannot be thereafter held that these items can be classified for use in ‘Outdoor games’. The items under consideration cannot be used for any of the ‘Outdoor games’ listed out under 950691. These items can only be used for swimming and hence the classification under 95069990 is incorrect. In fact these items are classifiable under 95062900. It was further submitted that once the lower appellate authority held that these items are used by kids for swimming should have rightly classified under 95062900 extending the benefit of Notification No. 12/2012 dated 17.03.2012 (Sl.No.503) as per which Customs duty is “Nil”

and hence the appellant qualifies for exemption of SAD under Sl.No.1 of Notification No. 21/2012.

- ii. The lower appellate authority has while classifying these items under 95069990 overlooked "General Rules of Interpretation as per which specific heading which provides the more specific description should be preferred to a heading providing a more general description. Having held that the items under consideration *viz.* Sea Squad Swim Seats, Arm Bands and Bio Fuse Fins are meant for kids while swimming and the more specific heading would be 95062900 and not 95069990 which heading covers various games like boxing, badminton, hockey which are distinct from swimming. Therefore, going by Rule 3 of the rules of interpretation also these items are correctly classifiable under 95062900.
- iii. The lower authority failed to consider the submissions of the Assessee that in the past, the Department was classifying these items under 95062900 and also extending the benefit of various Notifications and when there is no change in the items imported there is no justification for change in classification and consequent denial of benefit under Notifications.
- iv. It was submitted that the lower appellate authority having upheld classification of bio fuse aquatic ear plugs and technical and power paddles under 95062900 in the impugned order

by considering that swimming is a water sport and any equipments required/ meant for swimming will come under the category of water sports, ought to have extended the same logic for the sea squad swim seats, bio-fuse fitness fin and arm bands as they are used only for swimming.

- v. That the impugned order had totally erred in classifying head gear, fabric hats and swimming goggles under CTH 95069990. Instead goggles are classifiable under 90049090, headgear under 65069100, fabric hat under 65050090 which are specific headings for these items which was never disputed by the Department or the Assessee.

7.1 The Ld. Advocate Shri R. Nagaraj representing the appellant has argued that:-

- i. CTH 9506 covers articles and equipments for swimming pools and paddling pools and CTH 95062900 specifically covers other water sports equipment.
- ii. The authorities have accepted the fact that the items in question are meant for kids and are used for swimming but the finding is that they are not used for competition but used for fun which is a wrong interpretation. If kids swim for pleasure and not for competition, it does not become an activity other than swimming.
- iii. A proper reading of the definition indicates that the term 'Sport' can involve any activity for exercise, recreation, pleasure or

competition and need not always be for competition. Accordingly any items involved for these activities have to be grouped as 'Sports equipment'.

- iv. The authorities have further erred while interpreting clause (B)(2) of the HSN explanatory note to CTH 9506. Therefore CTH 95062900 covers any item as long as they are categorised as water sports equipment.
- v. Once the items are accepted as being used for swimming, be it for recreation or otherwise in the swimming pool, classification of these items under CTH 95069990 as "Outdoor games" is not correct.
- vi. CTH 3926 applies to other articles of plastics and 39269099 is a residual entry in the CTH 3926. The items are made for specific purpose with specific nomenclature and are not articles of general use. Further, the subject import items are not specifically covered under any entry in Chapter 39. Hence CTH 39269099 is not all applicable.
- vii. Note 3 of general rules of interpretation is overlooked as per which specific heading has to be considered over the heading giving general classification.
- viii. In Order-in-Appeal No. 1604/2013 dated 20.11.2013 Commissioner (Appeals) has accepted CTH 95062900 in respect of bio-fuse aquatic ear plugs which are similar in nature to the items in dispute.

7.2 The Ld. counsel for the Appellant has placed reliance on the following case laws:-

(i) Commissioner of Central Excise, Bangalore-II Vs. Super Seals [2004 (174) ELT 321 (Tri.-Bang.)]
and

(ii) Arihant Industrial Corporation Ltd. Vs. Commissioner of Central Excise, Thane-II [2017 (357) ELT 471]

8. The Department have filed these two appeals against the impugned orders of the lower Appellate Authority on the following grounds:-

- i. The sea squad swim seat is basically to be used by kids in kid-pools to remain afloat in water and are not required to be used in active sports and are a non-essential part of any water sport. The Appellate Authority has correctly concluded that the chapter Heading mentions games but has failed to appreciate the cognate meaning of games and its relation to the imported goods viz. sea squad swim seat which has made him state that the goods fall under Chapter 95.
- ii. The fact remains that the meaning of sports and games places more stress on the aspect of competitiveness, contrast, match, etc. played according to rules, thus excluding the sea squad swim seat coming anywhere near CTH 95.

- iii. The Appellate Authority has dwelled upon the technicality of six digit and eight digit classification of the goods under question and has concluded that once an item is covered under the heading under a four digit entry it has to be necessarily accommodated under the succeeding 6 digit and further under 8 digit entry. This conclusion is borne out of a pre-conceived notion that the goods are nothing but items of sports and games and would fall under CTH 95.
- iv. The conclusion that squad swim seat and arm bands are meant for Unisex and hence are meant for kids who take swimming as recreation and thus the impugned goods are classifiable under CTH 95069990 is incorrect. Sea Squad and arm band can't be equated and the appellate authority has misinterpreted the meaning of Uni Sex. In fact the word Unisex has implied that the goods could be used by kids of either sex or nowhere suggests that the same are meant for active sports/ games. The Appellate Authority has rightly concluded that the above items are meant for recreation but has strangely jumped to a conclusion that the goods would fall under "Outdoor games" meriting classification under 95069990 but the impugned items are remotely related to sports/ games. The nature and characteristics, which are so essential for proper classification of the goods, weigh heavily in favour of CTH 39269099 as residual heading for goods under CTH 39.

9. The Ld. Authorised Representative Shri R. Rajaraman representing the Department reiterated the findings of the lower Adjudicating Authority and the grounds of the Departmental appeals filed.

10. Heard both sides and carefully considered the submissions and evidences on record.

11. The main issue involved in these appeals is the classification of imported Sea Squad Swim Seats, Arm Bands, Bio Fuse Fitness Fin, Swimming Goggles, other Headgear of rubber or plastics and Fabric hats imported by the appellant who is of the firm view that the subject imports are classifiable under CTH 9506/9004/6505/6506 respectively, whereas the Original Adjudicating Authority had classified the subject items under CTH 3926. But, the lower Appellate Authority had classified the subject imported items under CTH 95069990 as evident at Paragraph 5 above.

12. Chapter Heading 9506 covers Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this Chapter; swimming pools and paddling pools Snow-skis and other snow-ski equip. CTH 950691 covers articles and equipment for general physical exercise, gymnastics or athletics. CTH 95062900 covers water skis, surfboards and other water sports equipment.

13. The description of the goods involved in these appeals are:-

- (i) Sea Squad Swim Seat which is an inflatable baby seat boat with leg opening which is used to make children sit while learning swimming.
- (ii) Sea Squad Arm band which is a piece of material worn around arm over the sleeve which is used for children to make them feel confident while in water.
- (iii) Other items are also swimming aids for children of Speedo Brand which is famous internationally for swimming related articles and quipment.

14.1 In order to decide the classification of Swim Seats, Arm Bands and Bio Fuse Fitness Fin, etc., the following Chapter Headings of Customs Tariff Act, 1975 are to be examined in detail.

14.2 The Original Adjudicating Authority has classified the imported goods under CTH 39269099 which is broadly categorised as "other articles of plastics and articles of other materials" mainly basing on the materials used for manufacture of these articles.

| Tariff Item | Description of goods | Unit | Rate of Duty | |
|-------------|--|------|--------------|--------------------|
| | | | Standards | Preferential areas |
| 3926 | Other articles of plastics and articles of other materials of the headings 3901-3914 | | | |
| ... | ... | ... | ... | .. |
| 39269099 | ---other..... | Kg. | 10% | - |

14.3 However, we find that Lower Appellate Authority has classified the disputed goods *viz.*, Swim Seat, Arm Band, etc. under 95069990 which reads as given below:-

| Tariff Item | Description of goods | Unit | Rate of Duty | |
|-------------|--|------|--------------|--------------------|
| | | | Standards | Preferential areas |
| 9506 | Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or out-door games, not specified or included elsewhere in this Chapter; swimming pools and paddling pools -Snow-skis and other snow-ski equipment: | | | |
| 95061100 | -Skis..... | u | 10% | - |
| 95061200 | -Ski-fastenings (ski-bindings)... | Kg. | 10% | - |
| 95061900 | --Other | Kg. | 10% | - |
| | -Water-skis, surf-boards, sailboards and other water-sort equipment: | u | 10% | - |
| 95062100 | --Sailboards.. | u | 10% | - |
| 95062900 | --Other... | u | 10% | - |
| | | | | |
| | | | | |
| 95069110 | -- Boxing equipment | Kg. | 10% | - |
| 95069190 | -- Other | Kg. | 10% | - |
| 950699 | -- Other | | | |
| 95069910 | -- Badminton shuttle cocks | u | 10% | - |
| 95069920 | -- Leg pads and bats for cricket | u | 10% | - |
| 95069930 | -- Shoulder pads for football | u | 10% | - |
| 95069940 | -- Hockey sticks and blades | u | 10% | - |

| | | | | |
|----------|--|---|-----|---|
| 95069950 | -- Polo sticks including blades, shafts and heads | u | 10% | - |
| 95069960 | -- Sports net | u | 10% | - |
| 95069970 | -- Tennis and badminton racket pressures | u | 10% | - |
| 95069980 | -- Shin-guards and elbow or shoulders pads excluding those for football; waist, thigh and hip protective equipment | u | 10% | - |
| 95069990 | -- Other | u | 10% | - |

14.4 Whereas, we find that the appellant has sought classification of Sea Squad Swim Seat, Armband, Rollup Armband under CTH 95062900, Swimming Googles under CTH 90049090, Headgear of rubber or plastics under CTH 65069100, Fabric Hats under CTH 65050090, Bio Fuse Fins, Tech Paddle and Power Paddle under CTH 95062900 and Sea Squad character Cap under CTH 65069100.

15.1 The Original Adjudicating Authority has classified all the imported items under CTH 39269099 denying the benefit of the exemption Notification No. 12/2012-CE dated 17.03.2012, whereas the Lower Adjudicating Authority has classified all the items under CTH 95069990.

15.2 The Lower Appellate Authority has set aside the classification adopted by the Original Adjudicating Authority on the ground that swimming is a water sport and any equipment required or meant for swimming will come under the category of water sports. He has specifically classified Bio Fuse Aquatic Ear Plugs under

CTH 95062900 *vide* his Order-in-Appeal No. 1604/2013 dated 20.11.2013. Other factor that appears to have weighed on his mind is that M/s. Speedo International is a leading brand for swimming equipment and these items are supplied all over the world under internationally accepted classification under CTH 9506.

16. At this juncture, it is also important to refer to the Customs Notification No. 12/2012-CE dated 17.03.2012 which accords exemption to various goods from payment of Basic Customs Duty and Additional Duty and the relevant entry for Swimming related goods reads as below:-

| S.No. | Chapter or Heading or Sub-Heading or Tariff Item | Description of goods | Standard rate | Additional duty rate | Condition No. |
|-------|--|--|---------------|----------------------|---------------|
| 503. | 9506 | (i) Snow-skis and other snow-ski equipment (ii) Water-skis, surf-boards, sailboards and other water-sport equipment | Nil | - | - |

17. The words used under CTH 95062900 are water-skis, surf-boards, sailboards and other water-sports equipment. Water sport equipment means any equipment, contrivance, frame or other device that one or more persons may lie, sit, or stand upon or in, and which is primarily for use in or on the water for pleasure, recreation or sports.

18. The Ld. Advocate for the Appellant has enclosed the photographs and write-up on Swim Seats, Bio Fuse Fitness Fin, Tech Paddle and Power Paddle. The sea squad swim seat is basically used by kids in kid-pools to remain afloat in water. Likewise, the imported arm

bands and bio fuse fitness fins are for use by kids for swimming activity. He has contended that the subject imported items to be considered as water sports equipment. Further, he has submitted that, once an item is covered under the heading under a four digit entry it has to be necessarily accommodated under the succeeding 6 digit and further under 8 digit entry that the lower Appellate Authority has while classifying these items under 95069990 overlooked the provisions of "General Rules of Interpretation" as per which specific heading which provides the more specific description should be preferred to a heading providing a more general description. Therefore, in terms of the General Rules of interpretation also these items are more appropriately classifiable under 95062900.

19. CTH 3926 applies to other articles of plastics and 39269099 is a residual entry in the CTH 3926. The items are made for specific purpose with specific nomenclature and are not articles of general use. Further the subject import items are not specifically covered under any entry in Chapter 39. Hence CTH 39269099 is not all applicable for the impugned goods. The Ld. Advocate has argued that the lower Adjudicating Authorities have erred while interpreting clause (B)(2) of the explanatory note to CTH 9506. We are of the view that these arguments are logical and requires to be considered.

20. We are of the view that CTH 95062900 covers any item as long as they are categorised as water sports equipment. Once the items are accepted as used for swimming, be it for recreation or otherwise in the swimming pool, classification of these items under CTH

95069990 as meant for "Outdoor games" is not correct. The impugned orders have accepted the fact that the items in question are meant for kids and used for swimming but the finding that they are not used for competition but used for fun and so not classifiable as water sports equipment is not a logical finding. If kids swim for pleasure and not for competition, it does not become an activity other than swimming. Having held that the items under consideration viz. Sea Squad Swim Seats, arm bands and bio fuse fitness fins are meant for kids while swimming and the more specific heading would be 95062900 and not 95069990 which heading covers various outdoor games like boxing, badminton, hockey which are distinguishable from swimming.

21. The impugned orders have erred in classifying Sea Squad Swim Seats, Bio-Fuse Fitness Fin and arm Bands under 95069990 as they were meant for recreation of babies/ kids in relation to swimming and the classification of these items under the category of outdoor games under CTH 95069990 is legally incorrect. CTH 95069990 falls under 950691 which covers "Articles and Equipment for general, physical exercise, gymnastic or athletic". Once having agreed that the Swim squad seats, bio fuse fitness fin and arm bands meant for kids to remain afloat in water, it cannot be thereafter held that these items can be classified for use in 'Outdoor games'. In the first place it cannot be said that swimming is only 'Outdoor game'. Swimming can be either indoor or outdoor. Generally, swimming is considered as a sport rather than a game. It does not mean that no game is played in swimming. Water polo is played in water which is considered as a game. Further the items under consideration cannot be used for any of the 'Outdoor' games specifically listed out under 950691.

These items can only be used for swimming and so the classification under 95069990 is incorrect. We are of the considered opinion that these items are more appropriately classifiable under 95062900.

22. The Ld. Advocate has submitted that in the Appellants own case for the entire period, excluding the above disputed Bills of entry, either demand was dropped or the demand was set aside by the lower appellate authority and in all such cases the Department never had preferred any appeal. In this regard, we further find that the lower appellate authority *vide* Order-in-Appeal No. 1604/2013 dated 20.11.2013 having upheld classification of bio fuse aquatic ear plugs under 95062900 in the impugned order by considering that swimming is a water sport and any equipments required/ meant for swimming will come under the category of water sports, ought to have extended the same logic for the sea squad swim seats, arm bands and paddles as they are used only for swimming.

23.1 As per HSN explanatory notes:-

- 95.06 **ARTICLES AND EQUIPMENT FOR GENERAL PHYSICAL EXERCISE, GYMNASTICS, ATHLETICS, OTHER SPORTS (INCLUDING TABLE - TENNIS) OR OUTDOOR GAMES, NOT SPECIFIED OR INCLUDED ELSEWHERE IN THIS CHAPTER; SWIMMING POOLS AND PADDLING POOLS.**
- Snow-skis and other snow-ski equipment:
 - 9506.11 -- Skis
 - 9506.12 -- Ski-fastenings (ski-bindings)
 - 9506.19 -- Others
 - Water-skis, surf-boards, sailboards and other water-sport equipment:
 - 9506.21 -- Sailboards
 - 9506.29 -- Other
 - Golf clubs and other golf equipment:
 - 9506.31 -- Clubs, complete
 - 9506.32 -- Balls
 - 9506.39 -- Other

- 9506.40 -- Articles and equipment for table-tennis
 - Tennis, badminton or similar rackets, whether or not strung:
- 9506.51 -- Lawn-tennis rackets, whether or not strung
- 9506.59 -- Other
 - Balls, other than golf balls and table-tennis balls:
- 9506.61 -- Lawn-tennis balls
- 9506.62 -- Inflatable
- 9506.69 -- Other
- 9506.70 -- Ice skates and roller skates, including skating boots with stakes attached
 - Other:
- 9506.91 -- Gymnasium or athletics articles and equipment
- 9506.99 -- Other

The heading covers:

(A)

(B) Requisites for other sports and outdoor games (other than toys presented in sets, or separately of heading 95.03) e.g.:

(1).....

(2) Water-skis, surf boards, sailboards and other water-sport equipment such as diving stages (platforms), chutes, divers, flippers and respiratory masks of a kind used without oxygen or compressed air bottles, and simple underwater breathing tubes (generally known as "snorkels") for swimmers or divers.

23.2 Thus HSN Notes clearly indicate Surf Board, Sail Board, Chutes, under water swimming tubes (Snorkels), etc., are classified under CTH 9506. Swim Seats and Arm Bands which are used for swimming activity for kids are also covered under this Chapter Heading 9506 as these are akin to chutes, flippers, surf-boards, sailboards or snorkels. As such, these imported items are more appropriately classifiable under 9506.29 as water sports equipment though meant for use for children.

24. The Ld. Advocate has referred to the decision in the case of *Arihant Industrial Corporation Ltd. Vs. Commissioner of Central Excise, Thane-II [2017 (357) ELT 471 (Tri.-Mum)]*, which held while deciding on Climbers and Thriller used for Children's play and games installed in playground and gardens, as follows:-

"----- We observe that these goods are admittedly for children's plays. Therefore, as far as small children these are sports equipments for their play. We also observe that the lower authorities have contended that the sports which are played nationally and internationally only are sports and play of the children in garden and playground, are not sports which we do not agree with lower authorities. For every age there are different type of plays and games, small children's sports is the games and plays which they play in garden with the use of these equipments, therefore these are the sports activity for the children----"

From the above it can be seen that equipment used in Children's playground are falling under the classification of "Sports goods" under CTH 9506. Drawing similar analogy, we find that sea squad swim seats, arm bands and bio-fuse fitness fin merits classification under CTH 9506 and not under Chapter 3926 as articles of plastics.

25. We find that the classification of head gears, swimming goggles and fabric hats is not the subject matter of Appeal before the lower appellate authority who had however preferred to re-classify these goods under 95069990 in the impugned Order-in-Appeal C.Cus.No. 1118/2014 dated 30.06.2014. CTH 6506 covers all hats and headgears in particular safety headgears. The impugned order in 3rd appeal has erred in classifying Head Gear, Fabric hats and Swimming Goggles under CTH 95069990. Instead goggles are classifiable under 90049090, headgear under 65069100, Fabric hat under 65050090 which are specific headings

for these items which has never been disputed by the Department or the Assessee in earlier imports. Accordingly, we are of the considered opinion that the head gears, swimming goggles and fabric hats are not classifiable under CTH 95069990.

26. In view of the detailed reasoning and analysis, we hold that appropriate classification of Sea Squad Swim Seats, Arm Bands, Tech Paddles, etc., is under CTH 9506 2900 of Customs Tariff Act, 1975. As such, we cannot sustain the impugned Orders-in-Appeal Nos. 1601 & 1602/2013 dated 19.11.2013 and No. 1118/2014 dated 30.06.2014 and so ordered to be set aside.

27. The appeals filed by the importer appellant are allowed with consequential relief, if any, as per the law. The appeals filed by the Department are rejected as above.

(Order pronounced in open court on 01.02.2024)

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

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