CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>New Delhi</u>

PRINCIPAL BENCH – COURT NO. 1

Customs Appeal No. 55805 of 2023

[Arising out of Order-in-Original No. 09/Commr/VC/Vee Vee/Entp./ICD PPG/2023-24 dated 01.08.2023 passed by the Commissioner of Customs, Patparganj, Delhi]

Vee Vee Enterprises : **Appellant**
2437/45, Shop No. 121, 1st Floor, Pt.
Maha Singh Complex, Teliwara, Sadar
Bazar, Delhi-110066

Vs

Commissioner of Customs, Patparganj : **Respondent**
ICD PPG & Others ICDs, Patparganj, New Delhi

WITH
Customs Appeal No. 55808 of 2023

[Arising out of Order-in-Original No. 16/Commr./VC/JMD Impex/ICD-PPG/2023-24 dated 29.08.2023 passed by the Commissioner of Customs Patparganj, Delhi]

JMD Impex : **Appellant**
C-1A Aruna Park 215, 2nd Floor,
MS Chamber, Laxmi Nagar
East Delhi-110092

Vs

Commissioner of Customs, Patparganj : **Respondent**
ICD PPG & Others ICDs, Patparganj, New Delhi

AND
Customs Appeal No. 50032 of 2024

[Arising out of Order-in-Original No. 11/Commr./VC/V. K. Import Export/ICD-PPG/2023-24 dated 08.08.2023 passed by the Commissioner of Customs Patparganj, Delhi]

V. K. Import Export Co., : **Appellant**
2904/3, 1st Floor, Hanuman Market,
Rui Mandi, Sadar Bazar, Delhi-110006

Vs

Commissioner of Customs, Patparganj : **Respondent**
ICD PPG & Others ICDs, Patparganj, New Delhi

APPEARANCE:
Shri Devesh Tripathi, Shri Divesh, Shri Ajay Kumar and Shri Pratham Joshi, Advocates for the appellant

Shri Shiv Shanker, Authorised Representative of the Department

CORAM :
HON'BLE DR. RACHNA GUPTA, OFFICIATING PRESIDENT
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER No. 51400-51402/2026

Date of Hearing:14.07.2026

Date of Decision: 25.08.2026

HEMAMBIKA R. PRIYA

The present appeals have been filed by M/s Vee Vee Enterprises, JMD Impex and V. K. Import Export Co.[1] against the impugned orders dated 01.08.2023, 29.08.2023 and 08.08.2023 wherein the Commissioner confirmed the demands along with interest and appropriate penalties.

2. Brief facts of the case are that the appellants were engaged in import of balloons made of natural rubber latex from China. During the period 01.01.2021 to 21.09.2022, the appellants imported goods and declared as "Natural Rubber Latex Balloon / Decorative or Festival Balloon" and classified the same under CTH 40169590 and 95059090, availing concessional rate of duty and exemption under Notification No. 50/2018-Cus dated 30.06.2018. Investigations were initiated by the Directorate of Revenue Intelligence (DRI), Surat, which revealed that the impugned goods

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1 **The appellants**

were in fact "Toy Balloons made of Natural Rubber Latex", and were correctly classifiable under CTH 95030090, attracting BCD @ 60%. It was found that prior to January 2021, the appellants had been classifying identical goods under CTH 95030090, but had subsequently changed the classification. Statements were recorded under Section 108 of the Customs Act, 1962, wherein the proprietor admitted that toy balloons fall under heading 9503 as per HSN Explanatory Notes and Notification No. 02/2021-Cus dated 01.02.2021. Further, investigations established that the description and classification on the shipping documents were altered at the request of the importer. Thereafter, Show Cause Notice dated 03.02.2023, 13.03.2023 and 27.02.2023 were issued to the appellants proposing re-classification under CTH 95030090, recovery of differential duty, confiscation of goods and imposition of penalties. The adjudicating authority, after due process, passed the aforesaid Orders-in-Original confirming the demands along with interest and penalties. Aggrieved by the said orders, the appellants have filed the present 3 appeals. As the issue and facts in all 3 appeals are identical, the three appeals are being considered together.

3. Learned counsel for the appellant submitted that the balloons imported by the appellant were made of natural latex rubber. He stated that these balloons were simple in nature, without any design, shape, printing or other features which would render them playthings for children. Hence, these balloons were classifiable under CTH 40169590 as Articles of vulcanised rubber other than

hard rubber or alternatively under CTH 95059090 as Festive Decoration. Learned counsel stated that certain consignments of balloons imported by the appellant were specifically used for decoration and festivals had been classified under CTH 95059090 (Festive, carnival or other entertainment articles) on the direction of the Department itself. He submitted that the Explanatory Notes to Chapter 95 (CTH 9503) define "toy balloons" as those manufactured/marketed for play and amusement, often shaped as animals, cartoons or novelty items. Learned counsel submitted that the term "toy" is not defined under the Customs Tariff, hence, as per settled principles, common parlance test has to be applied, taking into account the product's functional utility, design, shape, and predominant usage. In trade and commerce, these balloons were understood and sold as party/festive decorative items or as simple rubber articles, and not as toys for amusement of children. Learned counsel contended that toys derive their classification from such functional and design traits, not merely from material composition or general inflation capability. In support of his submissions, learned counsel relied on the decision of Hon'ble Supreme Court in **O.K. PLAY (INDIA) LTD. Versus COMMISSIONER OF C. EX., DELHI-III, GURGAON[2],** wherein the Apex Court has held that toys as indicated by HSN Heading, are miniature reproduction of the articles used by adults, like furniture, musical instruments etc. The appellant's balloons were plain, simple latex balloons without cartoons, molds, shapes or printed

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2 2005 (180) E.L.T. 300 (S.C.)

design and have diverse use including decoration, packaging, and party events but not "amusement" as the predominant intended use. The appellant's proprietor had confirmed that they were decorative, rather than toy balloons which was supported by product samples. Learned counsel stated that the subject balloons could not be considered toys for the purpose of classifying them in CTH 9503. In support of his submissions, learned counsel relied on the decision of **Pleasantime Products. Versus Commissioner of Central Excise, Mumbai-I**[3] and **Commissioner of Customs, Ludhiana versus Goyal Brothers**[4] wherein the Tribunal held that the Balloons intended to break upon impact would be classifiable under CTH 95059090 and not in CTI 95030020.

3.1 Learned counsel further submitted that the burden of proof lay on Revenue for classification and duty demand as held in **Puma Ayurvedic Herbal Ltd.** versus **Commissioner of Central Excise**[5]**.** Similarly, in **Hindustan Ferodo Ltd.** versus **Collector of Central Excise, Bombay**[6]**.** Learned counsel also contended that the Department had failed to provide any concrete evidence in support of 'toy balloon’ classification. He stated that the Department had failed to show as how the balloons made of Natural Rubber Latex are toys and how they were essentially for amusement of a person. He stated that the appellant had provided detailed replies, product samples, import documents, and proprietor's statements clarifying the non-toy, decorative nature of

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3 2009 (243) ELT 641 (ST)
4 (2026) 38 Centax 41 (Tri.- Chan)
5 (2006) 196 ELT 3
6 1997 (89) E.L.T. 16 (S.C.)

these balloons. In support of his submissions, learned counsel relied upon the decision of Hon'ble Supreme Court in **H.P.L. Chemicals Limited** versus **Commissioner of Central Excise, Chandigarh**[7]**.** Learned counsel also submitted that on interpretation as per judicial pronouncements, the Supreme Court in **Reliance Cellulose Products Ltd.** versus **Collector of Central Excise Hyderabad**[8] had held that a term used in a statute with a known technical meaning must be understood in that technical sense, not distorted by popular usage, if a proper tariff entry exists. Learned counsel in this regard relied on the decision of **Indian Aluminium Cables Ltd.** versus **Union of India**[9]. He stated that the decision in **Pleasantime Products (supra)** had defined "toy" emphasizing its function as an item entertaining or amusing children, often reducing adult objects to miniature, distinguishing toys from entertainment or decorative items. Learned counsel submitted that the appellant relied on the said decisions to demonstrate that their goods viz., plain balloons for decorative use, do not fall within "toy balloons" classified under 95030090. Further, the Supreme Court has held that if goods are classifiable under two headings, the benefit must be given to the assessee as held in **Calcutta Springs Ltd.** versus **Commissioner of Central Excise**[10]. Further, the learned counsel submitted that the previous customs orders reclassifying similar consignments

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7 [2006 (197) ELT 324 (S.C.)]
8 [(1997) 93 ELT 646 (SC)]
9 [(1985) 21 ELT 3 (SC)]
10 [(2008) 229 ELT 161 (SC)]

under 9505 were not challenged by the department, emphasizing inconsistency in revenue's stand.

3.2 Learned counsel further submitted that natural latex rubber balloons were classifiable under CTH 4016.95 as Other Inflatable Article of Vulcanised Rubber or alternatively under CTH 9505. Natural latex rubber balloons were products manufactured using vulcanized rubber, which imparts elasticity, stretch to the material. These balloons were chiefly designed to be inflated with air or gas and were predominantly plain without special shapes, cartoon figures, mechanical features, or play-oriented designs. Learned counsel stated that this technical composition and pure inflatable character align directly with CTH 4016, which refers to "other articles of vulcanized rubber other than hard rubber," and was further specified in 4016.95 as "other inflatable articles."

3.3 Learned counsel also submitted that the Tariff heading 9503 was specifically reserved for "toys," which, under customs law, are articles manufactured or recognized for children's amusement or play. Natural latex rubber balloons, when plain and primarily used for decoration or celebratory events, do not meet the threshold of toy. Their commercial and functional identity is that of a decorative or utilitarian inflatable, not a toy. He referred to CBIC Notification No. 50/2017-Cus, as amended by No. 02/2021-Cus, which provides that this entry [Chapter 40] does not include toy balloons made of natural rubber latex (toy balloons are classified under Customs tariff heading 9503. The legislative intent is clear that "Toy balloons" with the characteristics and intent are moved to heading

9503. All other latex rubber balloons, which do not fit the toy definition, remain within 4016.95 and thus, settles any interpretational doubt.

3.4 Learned counsel for the appellant further contended that as there was no intent to evade duty by the appellant, penalty cannot be imposed. He submitted that the appellant had been engaged in lawful import of toys since 2016 and relied on the Order-in-Original dated 20.09.2021 which had reclassified similar goods under 9505, and the appellant had followed this directive. The appellant had cooperated with investigation and produced documents and statements. No evidence of fraudulent intent or concealment exists; classification changes were based on good-faith and in compliance of directions of Department. Learned counsel stated that imposition of penalty under Section 112(a)(ii) hinged on proving that the importer intentionally or knowingly misclassified goods with a view to evade payment of customs duty. Mere incorrect classification or difference of opinion does not attract penalty without mens rea. In support of his submission, learned counsel relied on the decision of the Tribunal in **Aureole Inspecs India Pvt. Ltd.** versus **Principal Commissioner, Customs**[11]**.** He prayed that the three appeals may be allowed.

4. Learned Authorized Representative for the Department submitted that the impugned goods was clearly toy balloons intended for amusement, which was conclusively supported by the HSN Explanatory Notes to Heading 9503, specifically covering "toy

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11 (2023) 11 Centax 211 (Tri.-Del)

balloons and toy kites". Learned Authorized Representative stated that classification under CTH 95030090 was correct in terms of Rule 1 of the General Rules for Interpretation of the Tariff, read with relevant Chapter Notes. He submitted that the proprietor of the appellant firm, in statements recorded under Section 108, had categorically admitted that toy balloons were classifiable under CTH 9503 and that earlier imports were correctly classified under the said heading. Learned Authorized Representative submitted that such voluntary admissions carry high evidentiary value and remain un-retracted. Further, he stated that the evidence on record established that the importer had deliberately altered the description and classification of identical goods from CTH 95030090 to 40169590/95059090 to avail exemption and pay lower duty. The change was not based on any change in nature, composition or end-use of goods, but purely with intent to evade customs duty.

4.1 Learned Authorized Representative further submitted that the exemption under Notification No. 50/2018-Cus was wrongly availed by mis-classifying toy balloons under Chapter 40. He stated that CBIC had clarified vide Notification No. 02/2021-Cus that toy balloons made of natural rubber latex are excluded from Chapter 40 and fall under Chapter 95, thereby disentitling the appellant from the exemption. He submitted that mere clearance of goods based on self-assessment does not bar the department from invoking Section 28 of the Customs Act, 1962, especially where mis-classification and suppression of facts are subsequently detected through investigation. The deliberate mis-statement of description, frequent change of classification, and conscious availing of ineligible exemption clearly establish suppression of facts and intent to evade duty, justifying invocation of the extended period under Section 28(4) of the Act. Learned AR contended that the conduct of the appellant squarely attracted penal provisions under Section 114A and Section 112 of the Customs Act, 1962, as the short-payment of duty arose due to wilful mis-classification and suppression. Learned Authorized Representative prayed that the impugned Order-in-Original and the appeal may be rejected.

5. We have heard the learned counsel for the appellant and the learned Authorized Representative for the Department. We have perused the records. The issue before us is the classification of balloons imported by the appellants. The 3 orders which are involved in the 3 appeals are as follows:-

Sr. No.	Appeal No.	Order-in-Original No.	Demand of duty and penalty
1.	C/55805/2023-Vee Vee Enterprises	09/Commr/VC/Vee Vee Ent./ICD-PPG/2023-24 dt. 01.08.2023	Rs. 1,05,07,482/- penalty 10,00,000/-
2.	C/55808/2023-JMD Impex	16/Commr/VC/JMD Impex/ICD-PPG/2023-24 dated 29.08.2023	Duty Rs. 4,09,60,567/- penalty 35,00,000/-
3.	C/50032/2024-V. K. Import Export Co.,	11/Commr/VC/V.K. Import Export/ICD-PPG/2023-24 dt. 08.08.2023	Differential customs duty Rs. 8,33,079/- Confiscation of seized goods under section 111(1) and Section 111(m) of the Customs Act, 1962. penalty of Rs. 8,33,079/-

6. In order to appreciate the submissions of the learned counsel and the learned AR, it would appropriate to reproduce the comparative headings and the relevant HSN Explanatory notes-

:

CTH 4016 Other Articles of Vulcanised Rubber Other Than Hard Rubber
4016 95 Other inflatable articles:
4016 9510 Air mattresses
4016 9590 Other

CTH 9503: Tricycles, Scooters, Pedal Cars and Similar wheeled toys; doll's carriages; dolls; other toys; reduced-size ("scale") models and similarrecreational models, working or not; puzzles of all KINDS

950300		Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls; other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds:
95030010	--	Electronic
95030020	--	Non electronic
	--	Parts:
95030091	--	Of electronic toys
95039090	--	Other

CTH 9505 ; Festive, Carnival Other or Entertainment Articles, Including Conjuring Tricks And Novelty Jokes
95051000 . Articles for Christmas Festivities
950590 - Other:
95059010 … Magical equipment kg 20% -

95059090 … Other

6.1 The relevant explanatory notes of these CTH is also reproduced hereinafter:-

CTH 4016 :This heading covers all articles of vulcanised rubber (other than hard rubber) not covered by the preceding headings of this Chapter or by other Chapters.The heading includes :

(1) Articles of cellular rubber.

(2) Floor coverings and mats (including bath mats), **other than** rectangular (including square) mats cut from plates or sheets of rubber and not further worked than surface-worked (see the Explanatory Note to **heading** 40.08).

(3) Erasers.

(4) Gaskets, washers and other seals.

(5) Boat or dock fenders, whether or not inflatable.

(6) Pneumatic mattresses, pillows and cushions and other inflatable articles **(other than** those of **heading** 40.14 or 63.06); water-mattresses.

(7) Rubber bands: tobacco-pouches; characters for date stamps and the like.

(8) Stoppers and rings for bottles.

(9) Pump rotors and moulds: rubber liners for milking machines; taps, cocks, valves and similar appliances; xxxxxxxxx xxxxxxxxxxxxx

(10)Chassis mounting rubbers, mudflaps and pedal covers for motor vehicles, brake-blocks, mudguard-flaps and pedal blocks for cycles, and other parts and accessories for vehicles, aircraft or vessels of Section XVII.

(11)Plates, sheets and strip merely cut to non-rectangular shapes, xxxxx xxxxxx xxxxxxxxx

(12) Rectangular (including square) patches with beveled edges and patches of any other shapes for repairing inner tubes, xxxxx xxxxx

(13) Rubber-headed hammers.

(14) Small suction hooks, table mats, sink plugs, sink plungers, doorstops, rubber feet for furniture legs and other articles for household use.

The following are also excluded from this heading :

(a) Articles of woven, knitted or crocheted fabrics, felt or nonwovens, impregnated, coated, covered or laminated with rubber, xxxxxxxx xxxxxxx xxxxxxxx

(b)Footwear and parts thereof of Chapter 64.

(c) Headgear (including bathing caps) and parts of headgear, of Chapter 65.

(d)Vacuum cup holders (suction grips) consisting of a base, a handle and a vacuum lever, of base metal, . and nibber discs (Section XV).

(e)Rubber boats and rafts (Chapter 89).

(f)Parts and accessories of musical instruments (Chapter 92).

(g) Mattresses, pillows and cushions of cellular rubber, whether or not covered, including electric bed-warming padsfitted internally with cellular rubber, of heading 94.04.

(h) Toys, games and sports requisites and parts thereof of Chapter 95.

(ij) Date, sealing or numbering stamps, and the like, designed for operating in the hand, and other articles of Chapter 96.

CTH 95059090:

9505.10 - Articles for Christmas festivities

9505.90 - Other

This heading covers :

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

(1) Festive decorations used to decorate rooms, tables, etc. (such as garlands, lanterns, etc.); decorative articles for Christmas trees (tinsel, coloured balls, animals and other figures, etc); cake decorations which are traditionally associated with a particular festival (e.g., animals, flags).

(2) Articles traditionally used at Christmas festivities, e.g., artificial Christmas trees, nativity scenes, nativity figures and animals, angels, Christmas crackers, Christmas stockings, imitation yule logs, Father Christmases.

(3) Articles of fancy dress, e.g.. masks, false ears and noses, wigs, false beards and moustaches xxxxxx xxxxxxx

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

(B) Conjuring tricks and novelty jokes, e.g., packs of cards, tables, screens and containers, specially designed for the performance of conjuring tricks;

xxxxx xxxxxx xxxxxx xxxxxx xxxxxx

CTH 95030090

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

This heading covers :

(A) Wheeled toys.

xxxxxxxxx xxxxxxxxxxxx xxxxxxxxxxx

These toys include :

(1) Children's tricycles and the like, but excluding bicycles of heading 87.12.

(2) Two- or three-wheeled scooters designed to be ridden by children, as well as youngsters and adults, xxxxxx xxxxxx xxxxx

(3) Pedal- or hand-propelled wheeled toys in the form of animals.

(4) Pedal cars, frequently in the form of miniature sports cars, jeeps, lorries, etc.

(5) Wheeled toys, propelled by hand levers.

(6) Other wheeled toys (with no mechanical transmission system) xxxxxxxxxxx xxxxxxxxxxxx

(7) Children's cars powered by a motor.

(D) Other toys.

This group covers toys intended essentially for the amusement of persons (children or adults).

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.

(ii) Toy pistols and guns.

(Hi) Constructional toys (construction sets, building blocks, etc.).

(iv) Toy vehicles (other than those of group A), trains (whether or not e aircraft, electric boats, etc., and their accessories (e.g., railway tracks, signals).

(v) Toys designed to be ridden by children but not mounted on wheels, e.g., rocking horses.

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

(vii) Toy balloons and toy kites.

(viii) Tin soldiers and the like, and toy armaments.

xxxxxx xxxxxxx xxxxxxxxxxx xxxxxxxxxx xxxxxxxx

7. From the above reproduction of Customs Tariff Headings and the connected HSN Notes, we note that Heading 4016 is a residual "basket" heading of Chapter 40 for articles of vulcanised rubber (other than hard rubber) that are not covered by the more specific headings 4001–4015. We further note that the heading covers other manufactured general rubber goods such as gaskets, seals, buffers, mountings, floor mats, erasers, rubber bands not elsewhere specified, inflatable articles (other than those falling under 9503 as toys, or 9506 as sports equipment) etc. Ld. counsel has submitted that as the term 'toy' has not been defined in either the Customs Act or the Tariff, hence the term should be understood from its common parlance. He has further contended that as the imported balloons were simple in nature, without any design, shape, printing, or other features which would render them to be toys for children, hence, these balloons are classifiable under CTH 40169590 as articles of vulcanised rubber. He emphasised that inflatable articles are expressly enumerated at six-digit level CTH 401695 – as 'other inflatable articles'. The argument of the learned counsel is that balloons being inflatable rubber articles prima facie are classifiable under this heading. In this context, we note

that the HSN explanatory note D(vii) to CTH 9503 specifically mentions that toy balloons are to be retained in this heading. In our opinion, the HSN explanatory notes constitute a safe and internationally accepted guide for interpretation of tariff entries and has consistently been relied upon by Courts and Tribunal, while determining classification disputes. Once toy balloons are specifically covered under CTH 9503, we find that there is no reason to resort to any general or residual entry for its classification. We draw support from the Hon'ble Supreme Court judgment in the case of **M/s Thermax Ltd** versus **Commissioner of Central Excise, Pune**[12] which has highlighted the persuasive value of the HSN and held as follows:-

> *"6. The definition of a product given in the HSN should be given due weightage in the classification of a product for the purpose of levying excise duty. This is because in the Statement of Objects and Reasons of the Bill leading to enactment of Central Excise Tariff Act, 1985, it was clearly stated that the pattern of tariff classification is broadly based on the system of classification derived from the International Convention on the Harmonised Commodity Description and Coding System (Harmonised System) with such contraction or modification thereto as are necessary, to fall within the scope of the levy of Central Excise duty. The tariff so suggested for the levy under the Indian Tariff Act is based on an internationally accepted nomenclature, in the formulation of which, all considerations, technical and legal, have been taken into account. This was done to reduce avoidable disputes on tariff classification. Besides, the tariff would be on the lines of the harmonized system. It was also borne in mind that the tariff on the lines of the harmonized system would bring about considerable alignment, between the Customs and Central Excise Tariffs, which in turn, would facilitate charging of additional customs duty on imports, equivalent of excise duty. It was therefore expressly stated in the Statement of Objects and Reasons that the Central Excise Tariff are based on the HSN and the internationally accepted nomenclature was as such taken into account, to reduce tariff classification disputes.* ***Thus, it was suggested that a safe***

12 [2022 (382) E.L.T. 442 (S.C.)]

> ***guide for classification is the internationally accepted nomenclature emerging from the HSN and in case of doubt, the HSN should be chosen advisory for ascertaining the true meaning of any expression used in the Tariff Act……………………………………."***
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> **(emphasis supplied)**

8. In the instant case, we have already taken note that HSN explanatory note D(vii) to CTH 9503 specifically mentions that toy balloons are to be retained in this heading. We find that once there is such a categorical mention in the HSN, the same has to be accepted, despite the submissions made by the Ld Counsel for the appellant.

9. At this juncture, it would also be appropriate to take note of the Rule 1 of the General Rules of Interpretation[13] which states " the titles of sections, chapters, and sub chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes donor otherwise require …………".We note that the said rule treats the heading entry and the Section/chapter notes as a single interpretative unit. The rule provides that classification is to be determined by terms of the headings, and any relative section or chapter notes. It is also noted that where the tariff itself provides an unambiguous, appropriate entry, resorting to the interpretative rules doesn't arise. In this context, we note that the Supreme Court in the case of **Commissioner of Central Excise**, **Nagpur** versus **Simplex Mills committee Limited**[14] has held that GRI must be applied sequentially. This was reiterated in its subsequent judgment in **Secure Metres, Ltd**

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13 GRI
14 [(2005) 3 SCC 239]

versus **Commissioner of Customs, New Delhi**[15] wherein it was held as follows: -

> " 13) We may point out at the outset that Rule 3 of the General Rules, which is sought to be invoked by the Department, would be seen and examined if the classification cannot be determined according to the terms of the headings and relevant Section and Chapter Notes thereof. It is clearly provided in Rule 1 of the General Rules itself, which reads as under:
>
> "Classification of goods in this Schedule shall be governed by the following principles:
>
> 1. The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification 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 the following provisions:
>
> xx xx xx"
>
> It is manifest from the reading of this Rule that we will have to first undertake the exercise of finding out as to whether the goods in question can be classified, taking aid of the Chapter Notes on which reliance is placed. This position is made amplified in Commissioner of Central Excise, Nagpur v. Simplex Mills Co. Ltd.2, this Court held that the Rules for the Interpretation of the Schedule to the Central Excise Tariff Act, 1985 have been framed pursuant to the powers under Section 2 of that Act. The relevant para is reproduced below:
>
> "11. The Rules for the Interpretation of the Schedule to the Central Excise Tariff Act, 1985 have been framed pursuant to the powers under Section 2 of that Act. According to Rule 1 titles of sections and chapters in the Schedule are provided for ease of reference only. But for legal purposes, classification "shall be determined according to the terms of the headings and any relevant section or chapter notes".

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15 [(2015) 14 SCC 239]

> If neither the heading nor the notes suffice to clarify the scope of a heading, then it must be construed according to the other following provisions contained in the Rules.
> Rule 1 gives primacy to the section and chapter notes along with terms of the headings. They should be first applied. If no clear picture emerges then only can one resort to the subsequent rules. The appellants have relied upon Rule 3. Rule 3 must be understood only in the context of sub-rule (b) of Rule 2 which says inter alia that the classification of goods consisting of more than one material or substance shall be according to the principles contained in Rule 3. Therefore, when goods are prima facie, classifiable under two or more headings, classification shall be effected according to sub-rules (a), (b) and (c) of Rule 3 and in that order. ………………………………….”

10. In the instant case, we note that the imported goods are balloons, which find specific mention in the HSN Notes under CTH 9503, and it is correctly classifiable under the said heading. We also note that learned AR has referred to the Advance Ruling by Customs Authority for Advance Rulings[16], Delhi in Jai Shree Krishna Impex which held that the term "Toy Balloons" in para (D)(vii) of the Explanatory Notes to heading 9503 refers to latex/rubber balloons, and that such balloons do not merit classification under heading 9505, since they are purchased as toys for children's play rather than as decorative items. We also take cognisance of the amendment in Notification No. 50/2017- Customs, dated 30-6-2017, which provides for the rate of Customs Duty and IGST on goods of various descriptions for the purpose of import. The following explanation to CTH 40169590 & 40169990 was inserted under entry '284' of

16 CAAR

Notification No. 50/2017-Customs vide Notification No.02/2021-Customs dated 1-2-2021, which provides that:-

284.	40169590, 40169990	All goods, other than-	10%	-	-
		(i) Natural rubber latex made balloons; (ii) Microphone Rubber Case for cellular mobile phones; or (iii) Sensor Rubber Case/Sealing Gasket including sealing gaskets/cases from Rubbers like SBR, EPDM, CR, CS, Silicone and all other individual rubbers or combination/combination of rubbers for cellular mobile phones. Explanation. - For the removal of doubts, this entry does not include toy balloons made of natural rubber latex toy balloons are classified under Customs tariff heading 9503).			

This too supports the view that such balloons are liable to be classified under CTH 9503 only.

11. We now take up the other submissions of the Ld Counsel. He has stated that the toy balloon is correctly classified under CTH 40169590. In this regard we hold that the classification under chapter 40 is a material-based classification, whereas chapter 95 provides a specific functional classification for toys. It is a settled principle of classification that functional and specific classification prevails over material based residual classification. Since the imported goods are specifically recognised as toy balloons under Chapter 95, therefore classification under chapter 40 is not acceptable.

12. Learned counsel has further contended that the item toy balloons can also be classified under CTH 95059090 as festive or

entertainment articles. A perusal of the CTH 9505, it is noted that it covers festive articles such as streamers, paper, decorations, Carnival articles, decorative accessories of non-durable nature. We find that the HSN explanatory notes to heading 9505, nowhere includes toy balloons made of natural rubber latex. On the contrary, it is important to note that toy balloons are expressly covered under CTH 9503. Therefore, once a product is specifically covered under a specific heading, recovers to a general heading is not permitted as per GRI-1.

13. Learned Counsel has relied on the Supreme Court's judgment in **OK Play (India) Ltd** versus **Commissione**r in support wherein the Hon'ble Court held that the toys indicated in the CTH are miniature reproduction of articles used by adults. The instant case is not the classification of toys per se but relates to toy balloons which finds specific mention in CTH 9503 as per the HSN Explanatory Notes. Hence, we find that there is no need to refer to the said judgment to classify toy balloons, as specific heading is available for its classification.

14. Learned Counsel has also submitted that they had adopted CTH 9505 following the adjudication order dated 5.4.22 classifying the goods under 9505. In this context, we note from the order that the appellant had declared the goods as 'Decorative/festive items' and had classified the same under CTH 9503. It has been submitted before us that the Department has not appealed against this order and the same has attained finality. However, in this context, we find that material composition of toy balloons could have been the operative fact for deciding classification. We note that foil/nylon/HDPE balloons, has

been classified under CTH 9505 by the CAAR, Mumbai in Bharat Balloon House ruling holding that foil balloons are not toys, but decorative items. Since the Explanatory Notes to 9503 clarify that "toy balloons" specifically means rubber/latex balloons sold at beaches/parks for children's play, whereas foil articles are unsuited to such play due to fragility, thus classifying them under heading CTH 95059090 (festive/ carnival/entertainment articles). We find that the importer appellant had declared the item as decorative/festive item and hence the classification has been ruled under the aforesaid CTH. However, this is not binding as the item which is before us for classification are toy balloons of rubber/latex.

15. As regards the imposition of penalty under Section 114A of the Customs Act, we note that Ld AR has drawn attention to the conduct of the importer, Sh Vishal Gupta, who in his statement under section 108 of the Customs Act, had admitted that till December 2020, these goods were being classified under CTH 9503. Thereafter, he had requested the suppliers to change the classification in the Bills of lading from time to time. We also note that prior to January 2021, these goods were imported and CTH 9503 0090. Thereafter, these goods were classified under CTH 4016 9590. Subsequently from September 2021, onwards, these goods were classified under CTH 9505 9090. Learned counsel for the appellant has submitted that there was no intention to evade duty, hence penalty cannot be imposed. In this context, we find that the proprietor has admitted to requesting his supplier to change the classification of latex balloons on the Bills of Lading from time to time. The change in classification from CTH 9503

to CTH 4016 was carried out in order to avoid confirming to BIS standards as per DGFT Notification No. 26/2015-20 dated 01.09.2017 as amended. Such an action reveals the mindset of the appellant. We also note that the impugned order had observed one of the supplier M/s New Treature Holding had described the goods as 'Toy Latex Baloons' in Invoice No. 20200729592 dated 29.07.2020. It has been noted that one of the appellants, viz., JMD Impex had imported similar/identical goods and classified the same under CTH 40169590 and incorrectly availed the benefit of Notification No. 50/2018-Cus dated 30.06.2018. It is also imperative to note that the impugned order in respect of V. K. Export Co. as well as Vee Vee Enterprises has noted that prior to 26.06.2021, these 2 appellants were paying IGST @5% to the Department but collecting IGST @18% from their buyers. All such actions clearly display the malafide intent of the appellant, which invite penal consequences.

16. In view of the above discussions, we find no reason to interfere with the impugned orders. The same are upheld and the appeals stand dismissed.

(Order pronounced in the open Court on 25.08.2026)

(DR. RACHNA GUPTA)
OFFICIATING PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

G.Y.