

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

SOUTH ZONAL BENCH

CUSTOMS APPEAL NO: 20383 OF 2024

[Arising out of Order-in-Original No: 18/2023-24 dated 27th March 2024 passed by the Commissioner of Customs, Kochi.]

Lulu International Shopping Malls Pvt Ltd
34/1000-NH 47, Edappally, Kochi, *... Appellant*

versus

Commissioner of Customs
Customs House, Willindon Island,
Kochi *...Respondent*

APPEARANCE:

Shri Vijay Narayan, Sr Advocate and Shri MS Sajeew Kumar, Advocate for the appellant

Shri KA Jathin, Deputy Commissioner (AR) for the respondent

CORAM:

**HON’BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON’BLE MR AUGUSTIAN P A, MEMBER (JUDICIAL)**

FINAL ORDER NO: 20774 /2025

DATE OF HEARING:	13/03/2025
DATE OF DECISION:	02/06/2025

PER: C J MATHEW

It was Chelsea Handler, and doubtlessly oblivious to the context
here, who remarked

‘There are no warning signs on the trampoline, the trampoline is the warning sign’

but that notwithstanding, it should, says the appellant, be the headstone for every importer having temerity to avail benefit conferred by the Central Government in exercise of powers under section 25 of Customs Act, 1962 and woe betide if that be consequence of international treaty negotiations; for, if the impugned order is anything to go by, appearing uppermost is the belief among customs officers that, even if provisioned for, these should not be allowed to impede the larger purpose to exact tax owed to ‘Caesar’ for the State and that the final arbiter of national interest is the ‘keeper of the frontier’ with any clarification that may further the provisioned purpose being needless and inexpert. That ‘trampolines’ happened to be victim of such ‘national interest’ is not cause for amusement but poignant reminder of times past when ‘information access’ was mere jargon of fantasy merchants and those who did not know sought from those who did.

2. The ‘trampolines’ and ‘tag arenas’ in the dispute were sourced from producers in Subic Bay Free Port Zone in the Philippines and that was all it took to set the cat among the pigeons for that country, by caprice of contiguity and from prospect of prosperity, happened to be a Member-State in the Association of South East Asian Nations (ASEAN) with which the Republic of India treated over many areas of mutual interest, including trade, to conclude the ASEAN India Free

Trade Agreement (AIFTA). From this Agreement was birthed concessions that the Central Government saw fit to provide through notification¹ issued under authority of section 25 of Customs Act, 1962 and which was sought to be denied to the appellants here by simple switch of tariff line to undermine their claim of eligibility, at sub-heading level of First Schedule to Customs Tariff Act, 1975, to preferential rate. That the treaty negotiations was possessed of felicity for fine point there did not appeal to the sophisticate, bred to suckle from tariff lines, and which ever is the battle-field of preference. Business trends are measured in the long-run as 'cycles' with a good many 'swings' and 'roundabouts' in the short-run thrown in for good measure; so a few 'bounces', and warning notwithstanding, may just have to be accepted as good for the soul and for character-building. I know that I speak for Hon'ble Member (Judicial) too when I say that we are not likely to venture onto a trampoline! But there are many, some customs officials included, who may find the harmonic displacement of the vertical body riveting enough as pastime but having nothing serious in it for foregoing the pleasure of insisting that the price, that of the exchequer not excluded, be paid.

3. For that is what the appellant, M/s Lulu International Shopping Malls Pvt Ltd, is known best to offer; its iconic chain of malls, that is a marquee name in the Middle East and South Asia, is not just about

¹ notification no. 46/2011-Cus dated 1st June 2011

merchandising but an excursion to a world of fantasy. According to customs officials, that is no public good and, if a few juveniles and children wish to divert themselves, the guardians must not expect that the State should have to pass good cheer along. At least, as long as the ever-seeing of the tax collector is around. It surely cannot be the intent of the adjudicating Commissioner of Customs that the importer, M/s Lulu International Shopping Malls Pvt Ltd, should absorb the 'pound' sliced for the Consolidated Fund of India for the domain of indirect tax collector is drenched with the essence of tax intended to be passed on and the fiscal policy of government rides on that waft.

4. Now to the mundaneness of classification dispute: whether it be the description appended to tariff item 9506 9190, or to tariff item 9506 9990, in First Schedule to Customs Tariff Act, 1975 that the visual and technical characteristics of the impugned goods conforms to. Alas, that we shall never know until we take stock of the product and familiarize ourselves with the rival descriptions which is where the representation for both sides come forward to enlighten us. Before doing so, it would serve us all well to set the setting, so to speak, because if there is one feature of customs 'trolling' worth waxing on, it is assessment - where rate and value fuse to have a blast - to duties under the authority of section 17 of Customs Act, 1962 and the essence of statute that brings

'265. Taxes not to be imposed save by authority of law

No tax shall be levied or collected except by authority of law.'

of the Constitution to life. Both factors are not only being honed constantly but are expected to be in harmony with practices among the Member-States that make up the World Customs Organization (WCO). Because 'value' is in dispute here only consequentially, that aspect is parked for the nonce.

5. With the substitution of the Indian Tariff Act, 1934 by the Customs Tariff Act, 1975, the First Schedule, intended for publicizing one prong of tax policy of the Government of India, legislated a hierarchy of goods starting with live animals and featuring entries that, for now and time to come, could find fitment for anything and everything. The Harmonized System of Nomenclature (HSN)², manifest of international consensus purposing common platform for world trade and certainty of tax - a consummation devoutly wished for - to a large extent, is the mother creation of all tariffs. Along with that came the essential tool, viz., The General Rules for Interpretation of the Tariff, to make it work, both for tax structuring and for tax assessment; its primal purpose of enabling the Central Government to map the contours as a completed 'tax jigsaw' is, most often, forgotten by both - the collector and assessee - when engaged in tax combat and, thereby, omit to factor intent of government, no less governed by the Rules assented to, and the 'plumb line', as it were, as binding on itself. If the intent of the government is perceptible and perceived, the battlefield would be witness to far fewer, and only unavoidable, skirmishes. The control of the First Schedule by the General Rules for Interpretation of

² Harmonized Commodity Description and Coding System – World Customs Organization (WCO)

the Tariff is not only absolute but also exclusive and resolution of disputes without that bedrock, or even selectively, stultifies the outcome. There is no need to transport the whole of it here and now; suffice it to say that we propose to be guided by the General Rules for Interpretation of the Tariff to the extent of

‘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:

XXXXX

3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

XXXXX

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit

consideration.

4. Goods which cannot be classified in accordance with the under the heading appropriate to the goods to which they are most akin.

xxxxx'

6. The law³ requires an importer to file bill of entry within stipulated period after arrival of goods at the destined customs station and regulations⁴ stipulate particulars to be declared which, *inter alia*, include tariff item in First Schedule to Customs Tariff Act, 1975. Re-assessment under section 17 of Customs Act, 1962 may occur by altering the classification and the process established by law precludes such alteration, in the absence of concurrence from importer, without setting out reasons. The scope and extent of onus, and that of discharge thereof was examined by the Hon'ble Supreme Court and the fundamental rules of engagement on classification for the purpose of section 12 of Customs Act, 1962 was held in *Hindustan Ferodo Ltd v. Collector of Central Excise* [1997 (89) ELT 16 (SC)] thus

'It is not in dispute before us as it cannot be, that onus of establishing that the said rings fell within Item No. 22-F lay upon the Revenue. The Revenue led no evidence. The onus was not discharged. Assuming therefore, the Tribunal was right in rejecting the evidence that was produced on behalf of the appellants, the appeal should, nonetheless, have been allowed.'

³ section 46 of Customs Act, 1962

⁴ Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018

and, in *HPL Chemicals Ltd v. Commissioner of Central Excise, Chandigarh* [2006 (197) ELT 324 (SC)] that

‘This apart, classification of goods is a matter relating to chargeability and the burden of proof is squarely upon the Revenue. If the Department intends to classify the goods under a particular heading or sub- heading different from that claimed by the assessee, the Department has to adduce proper evidence and discharge the burden of proof. In the present case the said burden has not been discharged at all by the Revenue.....’

and brooking no deviation therefrom.

7. Procedure stipulated for import involves electronic filing of declaration, contemplated by section 46 of Customs Act, 1962, as set out in Bill of Entry (Electronic Integrated Declaration) Regulations, 2011 and uploading of supporting documentation, viz., bill of lading as evidence of title to goods, invoice as evidence of value, packing list as evidence of contents, for aiding ascertainment of rate of duty in the First Schedule to Customs Tariff Act, 1975 and, generally but more particularly for claim to preferential rate of duty, certificate of origin. Increasingly, it is common practice to indicate the HS Code, aligned with the Harmonized System of Nomenclature (HSN), in the shipping documents for ease of formalities but, being relevant to statistical compiling, compliance, and diligence in compliance, has more to do with domestic legislation and regulation in the country of shipment. The

comprehensiveness in structuring of the Harmonized System of Nomenclature (HSN), devised under the aegis of the Customs Cooperation Council (CCN) (to give the more familiar World Customs Organisation (WCO) its official, and only name, till 1994) has extended its utility in several areas of commodity trade well beyond classification for assessment to duties of customs.

8. M/s Lulu International Shopping Malls Pvt Ltd imported ‘amusement equipments tag, trampoline’, as declared in bill of entry no. 2144181/28.12.2020 at Kochi Customs accompanied by commercial invoice⁵ for €401032.82 which was self-assessed for impost at rate of duty corresponding to tariff item 9506 9190 of First Schedule to Customs Tariff Act, 1975 and claimed to be exempted under the authority of notification⁶, enumerating specific goods from ASEAN countries, against ‘certificates of origin (CoO)’⁷ issued by competent agency. Discharge of duty liability of ₹ 66,05,010.60, restricted to ‘integrated tax’ at 18% *ad valorem* on assessable value of ₹ 3,66,94,503.03, was not acceptable to customs authorities as the articles of import were alleged to be ineligible for benefit of exemption which was restricted to

‘Articles and equipment for general physical gymnastics or athletics:’

⁵ no. Inv-1318/29.10.2020 of M/s Play Mart International EOOD, Bulgaria

⁶ no. 46/2011-Customs dated 1st June 2011 at serial no. 1578 (II)

⁷ reference no. 20087/23.12.2020 and reference no. 21003/05.01.2020

corresponding to sub-heading 9506 91 of First Schedule to Customs Tariff Act, 1975 and did not extend to

‘Other:’

corresponding to sub-heading 9506 99 of First Schedule to Customs Tariff Act, 1975 which, according to customs authorities was appropriate description for the impugned goods. It was also alleged that the SWIFT statements recording transfer € 27300 and € 46800 on 24.02.2020 and 28.12.2020 respectively to the supplier towards ‘installation and services’ and € 19111.80 recorded as transfer towards ‘supply of goods’ on 25.06.2021 after installation warranted enhancement of € 74100 in the assessable value as provided in rule 3(1) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with rule 10 thereof.

9. The impugned order determined ₹ 93,24,102 as differential duty to be recovered under section 28(4) of Customs Act, 1962, along with applicable interest under section 28AA of the Customs Act, 1962, confiscated goods valued at ₹ 4,34,74,670 under section 111(m) and 111(o) of Customs Act, 1962 but with option to pay ₹ 40,00,000 as fine in lieu of confiscation under section 125 of Customs Act, 1962 besides imposing penalty of ₹ 93,24,102 and of ₹ 10,00,000 under section 114AA of the Customs Act, 1962 on M/s Lulu International Shopping Mall Private Limited as well as penalties of ₹ 9,00,000 and ₹ 10,00,000

on Shri Mohammed Shafi TS under section 112 and section 114AA of Customs Act, 1962 respectively.

10. The investigation, leading to the impugned proceedings, relied upon documents relating to import, email and other correspondence with seller obtained during search of premises, information and documents from bank, publicity material of the appellant-company pertaining to 'Funtura' division of Lulu Malls and deposition of Shri Mohammed Shafi TS, Manager (Imports and Exports) of the appellant-company. The imported goods were, apparently, taken up for investigation upon specific intelligence that could have alluded only to this importer and set in motion with interrogation of an employee under section 108 of Customs Act, 1962 who, obviously, was able to detail the purposes for which the impugned goods were deployed but was immediately unable to offer explanation for two sets of 'packing lists' and two sets of 'certificate of origin', both after shipment, though he did volunteer that normally one set would be provided directly by seller and the other through their designated bank. The deposition also elicited that the impugned goods were installed in the 'amusement area' of malls owned and operated by the appellant as detailed in the brochure and web-site and that 'goods and service tax (GST)' charged on collections as supplier of 'recreational, cultural, and sporting services' was deposited in the treasury of the exchequer.

11. The appellant's bank was able to furnish the commercial invoice, packing list and bill of lading with 'HS code 95069900' in the contents and of particular interest to the adjudicating authority was certificate of origin⁸ that differed from the two made available for clearance of goods and issued prior to arrival of goods. The SWIFT transaction statements pertaining to the import revealed payments towards invoices raised for installation services which set in motion action for proposing enhancement in assessable value. It was further clarified by the employee that the packing list and certificate of origin were reissued owing to erroneous HS code that was corrected to 95069190 and the latter had had to reissued once again to reflect the value (FOB) in the original. It was further explained that the customs broker had, inadvertently, uploaded the unrectified supporting documents.

12. The goods imported *vide* bill of entry No.2144181 dated 28.12.2020 were 'tag arena and trampoline' for installation at the amusement facility' in Lulu International Shopping Mall at Trivandrum in the name and style of 'Funtura' accessible to users on payment of charges. It was ascertained that 'trampoline' was the main equipment on which customers took on multiple physical challenges comprising nine activities and 'tag arena' was deployed for another nine rounds of challenge involving other skill sets. The records established that seller was M/s Playmart International, Bulgaria with IREC Corporation,

⁸ reference no. 20079/09.12.2020

Philippines as the manufacturer.

13. Learned Senior Counsel appearing for the appellant submitted that the impugned order was not based on any legal foundation and relied upon isolated correspondences that remained untested to affirm the allegations in the show cause notice. He contended that the demand was barred by limitation of time as there was no evidence of collusion, suppression or misrepresentation with intent to evade duty. Denying that the installation and commissioning was a condition of sale, he submitted that no evidence to that effect was even furnished let alone relied upon; according to him, a decision by the appellant to insist on the supplier installing the equipment did not amount to condition of sale and would merely be exercise of option which is not the contingency intended in rule 10 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Reliance was placed on the decision of the Hon'ble Supreme Court in *Commissioner of Customs (Port), Kolkata v. Steel Authority of India [AIR 2020 SC 3540]* and in *Commissioner of Customs (Port), Kolkata v. JK Corporation Ltd [2001 (208) ELT 485 (SC)]*. He submitted that payment of domestic tax on installation, and by chargeability under Central Goods & Service Tax Act, 2017 and State Goods & Service Tax Act, 2017, precluded recovery under Customs Act, 1962 as it was so intended legislatively and, even so, the entitlement to credit erased any empowerment to go beyond the normal period of limitation for recovery. He argued that, in

relation to equipment which is to be accessed by amateurs and inexperienced persons, safety is a key concern and it made good commercial sense to hold the supplier accountable for its proper working rather than endanger the lives and limbs of persons. He pointed out that onus for displacement of declared value rested on customs authorities except in circumstances of sale between related parties in which relationship influence the price and in which recourse was had to rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Furthermore, he argued that evidence obtained from electronic storage was inadmissible except by conformity with section 138C of Customs Act, 1962.

14. Turning to the issue of entitlement to benefit of preferential rate notified for imports from ASEAN countries, it was contended that denial was grounded on every projection other than that which should have, viz., descriptions below headings pertaining to the proposed tariff line which should conform both to the General Rules for Interpretation of the Tariff as enacted and in the manner laid down by the Hon'ble Supreme Court in *Hindustan Ferodo Ltd v. Collector of Central Excise* [1997 (89) ELT 16 (SC)] and in *HPL Chemicals Ltd v. Commissioner of Central Excise, Chandigarh* [2006 (197) ELT 324 (SC)] as judicially enunciated, and which may not be substituted by inadmissible and peripheral evidence usually brought forth to allege ineligibility for entitlement on the ground of unproven origin or doubtful authenticity

of proof of origin. He pointed out that discharge of onus would require the adjudicating authority to overcome the assessment of like goods at Nhava Sheva, Chennai and Delhi and that, from the examples of specific sport in the rival clusters, it could only be inferred that sub-heading 9506 99 of First Schedule to Customs Tariff Act, 1975 is intended for accessories essential for participant in sport which neither of the impugned goods are. He further pointed out that, even if such comparison was resorted to, the distinguishment of their preferred classification as requirement for the activity itself is discernible. Moreover, he argued that the goods are not excluded from the ambit of the notification and any attempt to read in an exclusion is not to be based on flimsy evidence in the face of certainty warranted by General Rules for Interpretation of the Tariff appended to Customs Tariff Act, 1975.

15. According to Learned Authorized Representative, the actual price contracted with M/s Play Mart International, the seller, was ₹ 4,34,74,670 though only ₹ 3,66,94,503.03 was incorporated in the invoice⁹ presented for assessment of the goods and that it was clear from the ‘sales and installation agreement’ in email correspondence of 29th January 2020 and the ‘purchase order¹⁰’, despite disaggregation of invoices for purchase and service at the insistence of appellant, that installation was condition of sale. He pointed out that the terms and

⁹ No. NP0118444/29.10.2020
¹⁰ No. NP0118444/29.10.2020

conditions in Sales and Installation Agreement also left room for doubt and that combined reading of agreement, purchase order, invoices and email correspondences unequivocally established that € 401032.82 was wrongly declared for assessment by splitting the goods component from service components even though € 475132.81, paid through the bank against different invoices, should have been assessed to duty. He contended that it was only at a later stage in the negotiations, and to avoid the incidence of duty, that the importer insisted on two invoices whereas the bank remittances proved that seller was the beneficiary.

16. Learned Authorized Representative further submitted that the goods had been attempted to be passed off as equipment for general exercise even though 'trampoline' and 'tag arena' are equipment to be used for games of amusement and fun which was clear from the brochure and web-site of 'Funtura', the branded leisure and relaxation space in the malls operated by the appellant. For this, he relied upon the items enumerated in the Explanatory Notes to the Harmonized System of Nomenclature (HSN) pertaining to the rival sub-headings. That this was so, according to Learned Authorized Representative, was further established by the HS Code in the bill of lading, packing list, invoice and certificate of origin issued by the seller and the subsequent corrections in the certificate of origin and the packing lists were intended, and at the instance of the appellant, to prevent customs authorities from raising queries about the classification. He pointed out

that the impugned order had dealt extensively with the email correspondence pertaining to the intended purpose of the goods as amusement games and also about the deliberate segregation of the total price payable. He submitted that all of this was corroborated in the statements of Shri Mohammed Shafi TS.

17. It is common ground that the impugned goods are ‘trampoline’ and ‘tag arena’, intended for installation in the ‘Funtura’ offering at malls operated by the appellant, and that the overseas supplier in Bulgaria had raised separate commercial invoices for the goods - for value on which duty was assessed under section 17 of Customs Act, 1962 - and two others for installation charges amounting to € 74100 (₹ 70,72,153.27) which, though not included in the assessable value, was the value on which domestic taxes had been assessed and paid. It has not been demonstrated in the impugned order that ‘trampoline’ and ‘tag arena’ are specified as excluded from the ambit of notification¹¹ exempting imports from ASEAN countries either from presence of description, as such, in First Schedule to Customs Tariff Act, 1975 but not in the notification or by invalidation of certificate of origin. There is, nor, any evidence of price of goods having been redacted to any extent which would have had the consequence of adoption of ‘actual’ price unearthed by investigation. There is no finding, neither, that the declared price, being unacceptable under rule 12 of Customs Valuation

¹¹ *ibid*

(Determination of Value of Imported Goods) Rules, 2007, was to be substituted by 'surrogate value' by recourse to rule 4 to rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Thereby, the issue in dispute is limited to validity of inclusions of payments made to seller of goods under the authority of rule 10(1)(e) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and chargeability to duty at rate of duty corresponding to tariff item 9506 9990 of First Schedule to Customs Tariff Act, 1975 which is not among those enumerated in the exemption notification extending preferential tariff treatment to goods from ASEAN countries.

18. Value has been sought to be enhanced under the authority of rule 10 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 flowing from the provisioning in rule 3(1) therein which enables conformity with

'(1)....

Provided that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf:...

in section 14 of Customs Act, 1962 in pursuance of which

‘(1) In determining the transaction value, there shall be added to the price actually paid or payable for the imported goods.-

xxxx

(e) all other payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller to the extent that such payments are not included in the price actually paid or payable.

Explanation.- Where the royalty, licence fee or any other payment for a process, whether patented or otherwise, is includible referred to in clauses (c) and (e), such charges shall be added to the price actually paid or payable for the imported goods, notwithstanding the fact that such goods may be subjected to the said process after importation of such goods’

is to be applied and contingent upon

*‘(3) **Determination of the method of valuation.** - (1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;*

(2) Value of imported goods under sub-rule (1) shall be accepted:

Provided that-

- (a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which -*
 - (i) are imposed or required by law or by the public authorities in India; or*
 - (ii) limit the geographical area in which the goods*

may be resold; or

- (iii) do not substantially affect the value of the goods;*
- (b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;*
- (c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and*
- (d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.*

A harmonious construct of these provisions enables perception of legislative intent to include such payments that are, directly or indirectly, to the benefit of the seller, if not already included, or demonstrated to be so on challenge by customs officers, in the price for sale of the goods and as condition of sale. This ‘adjustment’ to value is neither ‘surrogate value’, which is operated in yet another manner by demonstrated relationship lacking any pretence of price not having been influence or by lack of, or unconvincing, response to notice of doubt about truth or accuracy of ‘declared value’, as authorized by rule 3(4) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, nor ‘substitute value’ representing the price actually paid and under-reported using fraudulent means including

documents.

19. Adjustment in value inheres in the frailty of ‘value’ as a concept, that, of necessity, is hyphenated with assessment when rates of duty are not ‘specific’, and benchmarking of price contracted for sale adds to the frailty when cost of services are in question for, to the importer, such costs may, for accountal, be excluded entirely or only included partially by having to be amortized over a period. Though the constitutional distribution of authority for levy of duties of customs is, in the Seventh Schedule, restricted to goods, that the measure of the tax, impliedly, should include costs of services connected with the sale which merely happens to be deferred for payment from mutual convenience is not antithetical. Being addition of price connected with sale and attributable to imports, without illegitimizing price paid for the goods, and only contingent upon redaction from the selling price, it stands in stark contrast with resorting to illicit channels for payment. Generally, the mechanics of such adjustment is devoid of circumstances that prompt confiscation and penalties as consequence. This is corollary to price being, unquestionably, *consensus ad idem* in the agreement to buy and sell and the deeming fiction, as set out in section 14 of Customs Act, 1962, from beginning days for invisible, and merely attributable, ‘costs and services’ to be included in ‘transaction value’ for assessment and which, in turn, is described around ‘price’ for avoidance of complexity. An additional corollary, from contingency of addition only upon

ascertainment of ‘condition of sale’, is that the rigidity attached to evaluation, from the changed circumstances of the national tax regime since then, by incorporation of another level in the contextual similitude of this very ‘taxable event’, stands enhanced. Such provision existed, as far back as the Customs Valuation Rules, 1963, and continued in the next two editions of 1988 and 2007 with appropriate refinement. It was during the currency of the intermediate regime that ‘tax on services’ was legislated and well into its fading days did the range of the tax widen to cover especially ‘post-importation service’ in relation to goods. Enactment of Finance Act, 1994 and Goods and Service Tax Act, 2017, provisioning for mandated levy on rendering or supply of services in India did not exclude either costs connected with imported goods from its coverage or services procured from abroad and overlap of ‘import’ in both could not, for having been triggered by identical event, subject the same consideration to tax twice without grievous injury to the integrity of the boundaries of taxes vested in the Union. We do not, for a moment, suggest that such ‘services’ attributable to imported goods are consequently rescinded from the customs duty regime *in toto* or that primacy be accorded to taxing by the later levy; our positing is that the rule 10 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 needs to be strictly construed with no scope for flexing in assessment at time of import that may have the effect of overlap in tax liability and, consequently, that ‘condition

of sale' must not be inferred but determined to exist both in the contractual arrangement and by the factual matrix peculiar to each import.

20. We are emboldened in our conclusions on strict contouring warranted in adding value of services to price of goods as the doctrine of implied repeal, drawn from the maxim '*leges posteriores priores contrarias abrogant*', was considered by the Hon'ble Supreme Court, in a dispute over pre-eminence among competing legislated espousals with all appearance of conflict, and it was held, in *State of Madhya Pradesh v. Kedia Leather & Liquors and others* [AIR 2003 SC 3236], that

'54. ...There is presumption against a repeal by implication; and the reason of this rule is based on the theory that the Legislature while enacting a law has a complete knowledge of the existing laws on the same subject matter, and therefore, when it does not provide a repealing provision, the intention is clear not to repeal the existing legislation.....presumption against a repeal by implication;.....The doctrine of implied repeal is based on the theory that the Legislature, which is presumed to know the existing law, did not intend to create any confusion by retaining conflicting provisions and, therefore, when the court applies the doctrine, it does not more than give effect to the intention of the Legislature by examining the scope and the object of the two enactments and by a comparison of their provisions. The matter in each case is one of the construction and comparison of the two statutes. The Court leans against implying a repeal, "unless two Acts are so plainly

repugnant to each other that effect cannot be given to both at the same time, a repeal will not be implied, or that there is a necessary inconsistency in the two Acts standing together." (See *Craies on Statute Law, Seventh Edition*, page 366, with reference to *Re: Berrey (1936) Ch. 274*). To determine whether a later statute repeals by implication an earlier, it is necessary to scrutinize the terms and consider the true meaning and effect of the earlier Act. Until this is done, it is impossible to ascertain whether any inconsistency exists between the two enactments. The area of operation in the Code and the pollution laws in question are different with wholly different aims and objects; and though they alleviate nuisance, that is not of identical nature. They operate in their respective fields and there is no impediment for their existence side by side.'

In thus moulding the doctrine, the judgement did discard such presumption of implied repeal with consequence of co-existence and, stemming from the reason, viz., presumption of complete knowledge of existing laws, applied to the situational conflict of overlap of levy on procurement of service from abroad rendered taxable as domestic transaction from a later law as well as in earlier law relating to taxation of commodities with which service is bundled, we may safely conclude that boundaries of the two should not blur by overlap as legislative intent to tax 'service' both as import and as domestic – one incidentally in the measure for tax and the other directly as the subject of tax – is not perceivable.

20. We thus have € 475132.81 paid to seller as consideration for 'installation and commissioning' - a service, which though rendered on

or with imported goods, is required to be performed in India by or on behalf of supplier. The controversy is over such share of the consideration that accrues to the exchequer. Once upon a time, value of certain services was merged with the selling price of the goods for assessment on the premise that consideration for services already rendered to bring the goods to place of clearance, or agreed to be rendered before the goods arrive at port of clearance, could not be separated from the measure of value on which duties of customs was to be levied. While that may still not be, with the altered paradigm of tax since July 2017 fastening levy of the exchequer's pound on services, either upon actual supply or from deeming to have been in India, the qualifier 'condition of sale' is not only not amenable to broadening for accommodating executive preference but also renders the deeming fiction in *Explanation* in rule 10 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 to be unimplementable insofar as 'installation and commissioning' is concerned.

20. In the present dispute, 'condition of sale' has been inferred from documents and the *factum* of separate payments to the same seller. That 'installation and commission' was contracted to the Bulgarian supplier is not in dispute and that payment was made through bank remittance is not in controversy. It only needs to be ascertained if the enhancement has been prompted by finding that 'installation and commissioning' was 'condition of sale' or was merely an option exercised by the

appellant. We are inclined to accord primacy to the submission of appellant that it was the latter for even if it were not ‘condition of sale’, it would be sound for any importer, especially where safety in usage is of undoubted priority, to requisition the services of the seller for ‘installation and commissioning’ of equipment. In such instances, the seller does not even have to make rendering of such service to be ‘condition of sale’ and, in the absence of such condition, a narrow construct of rule 10 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 precludes any circumstantial inference; there must be evidence of negotiation demonstrating that seller has refused to sell the goods save with condition of rendering service in relation to goods for additional remuneration. The adjudicating authority has contented himself with existence of provision of such service in a purported agreement to conclude so; an agreement sets out comprehensively such terms as had been negotiated and insistence on the part of seller would hardly be reflected there. The appellant had discharged duty liability of ‘integrated tax’ under section 3(7) of Customs Tariff Act, 1975 and so would have with the enhanced value, too, which is available for offset on any ‘goods and service tax’ leviable thereafter on assessment of charges paid for such ‘installation and commissioning’ to tax; only the stage of actual payment, and by the same person, gets deferred or advanced. To pursue such a levy for recovery under section 28 of Customs Act, 1962 is nothing but exercise

in futility that is either cause of illegality by retaining tax not due or effort without gainful consequence - which is not only not in public interest but contrary to seamless international trade. In the light of altered circumstances, the *Explanation* in rule 10 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, admittedly inserted to overcome the ruling of the Hon'ble Supreme Court such as in *re JK Corporation Ltd*, may find itself being deployed as counter in proceedings initiated for recovery of duties for having been short-paid to the extent of charges for post-import services contracted for rendering. In effect, save for this *Explanation*, the provision for addition of 'cost and services' rendered by supplier after import remained the same in the preceding rules as in Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and, thereby, continuing the validity of decisions of the Hon'ble Supreme Court such as in *re JK Corporation Ltd*, in *re Steel Authority of India* and in *Collector of Customs, Ahmedabad v. Essar Steel Ltd [2015 (319) ELT 202 (SC)]* owing to inconsequentiality of the deeming fiction, notified around the time of taxing import of services was incorporated through section 66A of Finance Act, 1994 and of doubtful use only in certain situations of import, from 'across-the-board' credit neutralization under 'goods and service tax (GST)' with effect from 1st July 2017.

21. For all the above reasons of having failed to demonstrate 'installation and commissioning' being 'condition of sale', such service

being not only taxable upon being undertaken in India but also with ‘revenue neutral’ impact in circumstances of entitlement to exemption in the impugned notification, proposal for enhancement of value resting solely on an agreement that not only was lacking in provenance in accordance with section 138C of Customs Act, 1962 but also inadequate for evidencing that such service was ‘condition of sale’ and the factual matrix not excluding the inappropriateness of invoking extended period of limitation, resort to rule 10(1)(e) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 is questionable.

22. The placement of the dispute squarely within the impugned chapter of First Schedule to Customs Tariff Act, 1975 causes no controversy over the nature and purpose of the article of import and it has not been alleged that the goods were incorrectly described in the documentation accompanying, or declaration in, the bill of entry. It only remains to be seen, and in the context of the finding in the impugned order, if any distinguishment is noticeable in the dichotomy of the impugned heading; for that was the core of the rival submissions. It may, however, be premised that the law has settled that, generally, use is not criteria for classification. Before taking up the task of ascertaining validity of substitution of classification by tariff item 9506 1990 of First Schedule to Customs Tariff Act, 1975, the evidence garnered in support may be looked; this is, particularly, relevant as neither ‘trampoline’ nor

‘tag arena’ find specific mention in the schedule and the declaration of coverage by

‘Other’

corresponding to tariff item 9506 1990 has been altered to

‘Other’

corresponding to tariff item 9506 9990 of the First Schedule to Customs Tariff Act, 1975 bespeaking inexactitude which certainly is cause for pause on the bouquet of evidence. There was the usual information about misuse of preferential rate which was allegedly confirmed by the HS Code 9506 9990 in the supporting documents, viz., invoice, packing list and certificate of origin supplied by appellant’s bank made even more suspect by the submission of two sets of packing lists and certificate of origin for clearance of the goods as well as the email correspondence on substitution of the unfavorable HS Code with the favourable one and the publicity material for ‘Funtura’ activities.

23. The premise that the exemption is conditional upon installation at location other than malls and accessed by serious professionals finds no legal authority in either the relevant heading in the First Schedule to Customs Tariff Act, 1975 or the corresponding description in the exemption notification. The adjudication order is also bereft of any authority for this leap of thought and may, at best, be personal

projections that have strayed far from the path of law and procedures. The publicity materials, doubtlessly, portray the use that the importer has for it but to depict fun from challenge games involving trampoline and tag arena as lacking in the sobriety intended by the tariff line is insinuation of behaviour manifestation that has no place in tax adjudication. By that thinking, Olympians should first excoriate pleasure from their undoubted passion for their chosen sport to qualify as sportsperson; in other words, to dehumanize themselves. That is the only conclusion that may be drawn from the dismissive reliance placed on publicity material. That 'trampoline' is an Olympic sport is on record; it is not, insofar as arguments go, a contrivance for masquerading fun activity as a sport and not that it is of any relevance as 'sports' is not defined in terms of such inclusions but, that it is, takes away any possibility of questioning such activity as sport for any reason whatsoever.

24. Documentation with HS Code identifying with the revised classification is one of the grounds adduced in the impugned order for the substitution. That these were issued from supplier's end has been eulogized for authenticity of classification. It would appear that these are commercial documents and not statutory requirements of customs law in the country of shipment. A declaration in a document that is mandated by law, with detriment as consequence of misdeclaration, may, without further ado, be conferred with sanctity that invoice and

packing do not acquire. These are amendable by mutual consent and, potentially, approvable for rectification through section 149 of Customs Act, 1962. It is on record that both certificate of origin and packing list bore HS Code identical to the tariff item code adopted by the adjudicating authority but it is also on record that these were corrected by the issuer and that certificate origin was rectified once again for incorrect value (FOB) on one occasion and for HS Code on another. Too much premium has been placed on that which are essentially commercial documentation merely from familiarity with those to such extent as to conceive conviction that these are documents prescribed by statute governing, and in assessment of duties for, customs clearance. They have their place in the process but not felicity for benchmarking classification. The email correspondence has not been authenticated, as provided for in section 138C of Customs Act, 1962, to carry weight as evidence of any deceptive undertaking on part of the appellant. Likewise, discard of contents of rectified certificate of origin without subjecting it to verification in the manner prescribed in the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 renders adverse inference therefrom to lack authority mantled by due process.

25. It would not be digression to examine the relevance of HS Code which has been assigned much significance in the exercise of re-classification by the adjudicating authority. HS Code is nothing but a

design cloned from the Harmonized System of Nomenclature (HSN) which was purposed for assigning, and ascertaining, rates of duties of customs by governments and international trade respectively; that it has found utility elsewhere – variously for other levies on domestic activity or as a control device – does not accord the legal sanctity that customs assessment for import or export does. Without reference to authority drawn from, and in, the laws of the exporting country, the HS Code in documents other than corresponding shipping bill is not to be relied upon; and, even in shipping bills, there is no sanctity except in conjunction with the tariff schedule of the exporting country. The impugned order lacks essential comprehensiveness for affirmation by us. A reasonable familiarity with the two Schedules to the Customs Tariff Act, 1975 would have mapped out the utility of such secondary details in documents issued by the shipper: the Second Schedule to Customs Tariff Act, 1975 has, in comparison with the First Schedule, only a handful of enumerations and, while these are bundled with the appropriate codes from the Harmonized System of Nomenclature (HSN), limited to duties imposed on export goods. Most countries have few articles that are burdened with export duties and there is no reason to believe that Philippines is any different; even if there were export duties on many more goods than in the tax policy of India, the impugned order, in the lack of such elaboration of background for its conclusions, is but hedged speculation instead of authoritative findings.

26. Generally, the six digit codes in the ninety seven chapters of the Harmonized System of Nomenclature (HSN), replicated in the import tariff with or without additional digits for local detailing, is also deployed for other purposes that lie within the remit of other agencies without drawing upon the customs statutes and significance that these have in assessment of imported goods is absent in assessment of export goods, let alone for any other purpose. Without statutory prescription, coupled with penalties for misdeclaration, the same extent of diligence in determination cannot be attributed to inclusion elsewhere. Most often, it is source of statistical data on which nothing turns to benefit the seller. Moreover, an eight digit code is of no significance beyond the tariff of the country and even the first six digits therein lacks significance in the absence of reference to the structuring. That the goods, shipped from Philippines – a contracting State in the India ASEAN Free Trade Agreement (IAFTA) – with genuine certificate of origin, were covered by documentation emanating from seller in Bulgaria and, probably, in need of guidance about the unfamiliar, appears to have escaped attention of the adjudicating authority. A perception of HS Code in the documents furnished by the seller as anything more than it merits is blinkered approach to classification dispute. These inadequacies and deficiencies in the evidence in, and inference from, documents notwithstanding, and which is of more concern for acquiring jurisdiction to invoke the extended period of

limitation and for confiscation, the classification may, yet, draw lifeblood from the General Rules for Interpretation of the Tariff for revisit of declared tariff item in the bill of entry for a finding on merit of such proposal in the show cause notice.

27. To begin with, the adjudicating authority has, in setting out the issues to be resolved, noted within

‘a) Whether the declared Customs Tariff Item 95069190 for the goods imported vide Bill of Entry no. 2144181 dated 28.12.2020 is incorrect. If so whether the goods are correctly classifiable under the CTI 95069990 as contended in the SCN.’

which is perversion of the rules of engagement for classificatory adjudication, as set out in the decisions of the Hon’ble Supreme Court *supra*. Not unnaturally, the impugned order has taken upon itself to negate the claimed classification before assigning another fitment thus placing the sequence of onus on its head. Again, not unnaturally, by negation of the claimed classification before determining the appropriate one, the impugned order painted itself into a corner from seeking an alternative by exclusion of the declared tariff item and, thus, restricted the scope for application of the General Rules for Interpretation of the Tariff appended to Customs Tariff Act, 1975 contrary to its intent and range. The decisions of the Hon’ble Supreme Court were inspired by those very Rules which are intended operate sequentially and are to be processed without any restriction except that

which surfaces only by elimination at each stage of the sequence. Moreover, the hierarchical structure, as prescribed in rule 6, was also to be observed impeccably for discernment of the more appropriate of sub-headings and tariff items therein should the heading and the sub-heading thereafter respectively not provide the answer. The exercise under rule 1 and rule 3 therein was to be carried through to the 'eight digit' level for any claim to integrity. The adjudicating authority was, effectively, required to place the impugned goods within the appropriate heading by deeming that no classification had been claimed by importer. This the adjudicating authority, by prefacing the exercise with discarding the claimed classification, did not.

28. In the impugned order, the finding of appropriateness of the proposed classification for 'trampoline' has been erected, by relying on the decision of the Hon'ble Supreme Court in *Commissioner of Central Excise, Customs & Service Tax, Vishakapatnam v. JOCIL Ltd [2011 (1) SCC 681]*, on the foundation that classification should be based on 'essential character' over which was placed the publicity materials of the appellant, the description in the bill of entry lacking even single correspondence with 'general physical exercise, gymnastics or athletics' referenced in sub-heading 9506 19 of First Schedule to Customs Tariff Act, 1975, the email correspondence with seller being all about fun in the games for which 'trampoline' and 'tag arena' were to be used and dictionaries emphasising the fun aspect of games to

conclude that combination of not being specified elsewhere along with being games that are not covered by the claimed sub-heading warranted so.

29. The claim of ‘trampolining’ being gymnastic event in Olympic was discarded by comparison of trampoline dimensions and that of usage for formal gymnastic coaching was sneered at as ‘afterthought’ conceived after issue of show cause notice to contrive a situation offering escape from the detriment of misdeclaration. Relying upon the decision of the Hon’ble Supreme Court in *Goodyear India Ltd v. Union of India* [1997 (92) ELT 14 (SC)], the portrayed use, too, was marginalised for not being the ‘principal or dominant use’ which the adjudicating authority believed to have been held as the essence of classification.

30. It is evident that, in adjudicating the impugned notice, the Commissioner of Customs appeared to have been carried away by certain observations in the cited decisions simply owing to fitting in with need to deny access to preferential rate of duty even if it had to be achieved through revision in the tariff item for assessment. It is no less evident that classification itself has not been appreciated in its entirety as the essentials are ensconced in the General Rules for Interpretation of the Tariff appended to Customs Tariff Act, 1975 and each of the rulings in classification disputes are set in the frame of some situational

ambiguity in the tariff descriptions owing to which the ‘end of road’ in sequential application of the Rules from rule 1 through rule 3 to rule 4 and occasionally tarrying on rule 2 required judicial interpretation. Hence, the principle espoused in the judgements are precedents contingent upon degree of congruity. The extraction from the decision in *re JOCIL Ltd* was mere paraphrasing of a plea put forth on behalf of respondent-assessee with the conclusion of the order impugned here find coverage within

‘15. Referring to the essential characteristics of the subject matter would not only be applying contorted logic in arriving at the correct classification but would also amount to ignoring the express identification offered in Chapter 38 of the First Schedule of the Customs Tariff Act, 1975.

xxxxx

17. Having held thus, it is also important to note that the interpretive powers of this Court are significantly curtailed by the presence of a specific enumeration in Chapter 38 of the Tariff Schedule. This Court, while deciding an issue of classification, can only adjudicate along the lines of settled norms and precedents drawn from statutory interpretation and judicial precedents.’

appears to have been conventionally overlooked for its potential of disrupting the proposed outcome and omitted to take note of the legal provisions restricting even the highest court in the land. The decision in *re Goodyear India Ltd* was not only rendered in the context of the erstwhile schedule in Tariff Act, 1934 and lacking the statutory frame

of definitive rules for interpretation but also, in the lack of definition of the object of usage, from

'The subject "motor vehicle" is not defined in the Act or in the Rules prescribed thereunder, nor even in Item No.16 However, it is defined in Item No.34 of the Central Tariff wherein motor vehicles are also subjected to excise duty at different layers. We may point out that both sides agreed that the definition contained in Item 34 can usefully be imported for deciding what is a motor vehicle even as for Item 16...'

which stretched the dispute to classification of the goods on which the goods were mounted and has no application here in the absence of any authoritative, or consensual, reference for assigning meaning to the activity impugned here.

31. Thus the principle of 'essential character' and 'predominant use', that the adjudicating authority relied upon to classify 'trampoline', have no relevance until application of rule 3 of General Rules for Interpretation of the Tariff appended to Customs Tariff Act, 1975 is necessitated or notes in chapter prescribing 'used principally or solely' is required to be determined. In the impugned order, neither are. The adjudicating authority appears also to have picked up the wrong end of the stick in taking up technical specifications of 'trampoline' for scrutiny. Merely from inclusion of a particular sport in the Olympics are all partakers of its challenge not required to adhere to those standards; to do so would be to condemn amateurs to

disacknowledgement of any connection with the sport. That understanding on the part of the Commissioner of Customs is 'just not cricket' and is tantamount to inveigling of intent not intended by the description. The reference to Olympics was not for justifying that the goods do conform to Olympic standards, which, though, is not a qualifier prescribed in the heading, but to demonstrate that, in common parlance, 'trampolining' is a gymnastic sport. The dispute here is not about 'trampoline' but the connect of 'trampolining' with 'gymnastics' that has not been considered in the impugned order despite the rubric of the heading requiring foray in that direction. The contemptuous disdain for 'public good' as 'afterthought' to obfuscate 'fun and games' in 'trampolining' does nothing, however, to derogate the impugned goods as equipment for gymnastic sport.

32. To contrive a finding on 'essential character' of 'tag arena', the impugned order has trod upon a novel path of comparing it with an outdoor game, viz., football, and drew up a checklist that has all appearances of personal perspective to conclude similarity thus

'20.7.....Now the question is whether the essential character of Tag arena is that of a sport or of a general physical activity. In order to answer the same I proceed to draw an analogy between Tag arena and the sport of football. Football involves activities such as sprinting, walking, jumping, dribbling, leaping etc. It also involves strategy and tests the Intelligence of the player. But the essential character of football is that of a sport which is played under a set of rules.

The primary aim of the players is to win by scoring goals-and-preventing the opposite team from scoring goals. In the process, the players will engage in activities such as sprinting, walking, jumping, dribbling, leaping etc. However, it is an undisputed fact that the primary intention of football is not engage the players in sprinting, walking, jumping, dribbling or leaping. Any health related benefits that accrue from the physical activities involved in the game are incidental and can only be treated as incidental gains and not as its essence. Therefore, the essential character of football is that of a sport and not that of a general physical activity. The same applies to Tag arena. The primary intention of the participant is to score maximum points possible and win in the event. The health related benefits if any, that accrue from the physical activities such as Cardio, Climbing, Crawling, Balancing, Leaping, Sprinting etc, are only incidental. Therefore, I find that the essential character of the item 'Tag Arena' to be that of an equipment used in a sport/ game and hence should be treated as such.'

which suffers from the same lack of authority as did the principle to 'trampoline'; surely, a sport, known and played across the world, and a recognised one at that, is not amenable to hyphenation with it as a game that comprises a series of challenges. It is a game because there is neither public acclaim nor any monetary stake such as gate fees and the player pays to play. That it is a game does not detract from the physical exercise that goes hand-in-hand with the inevitable adrenaline rush. It is reward of itself. None of these sentiments are of relevance in classification; neither is the template adopted by the adjudicating authority to reject the claimed classification of 'tag arena' which may,

at a guess, be considered as a technology-driven indoor obstacle course. We do not have delve further in this vein in the face of rules of engagement in classification disputes having been ignored by the adjudicating authority. Suffice it to say, the tag of ‘outdoor’ tethered to ‘games’ excludes ‘tag arena’ from coverage therein.

33. That the substituted tariff line impugned in this appeal as well as the declared tariff line impugned in the show cause notice leading to the order impugned here find coverage within,

‘Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table tennis) or out-door games not specified elsewhere in the Chapter; swimming pools and paddling pools’

corresponding to heading 9506 in First Schedule to Customs Tariff Act, 1975, provides the framework for resolution of the dispute within the law, as enacted, and precedents, as judicially determined. Though the description is intended for ‘articles and equipment’, only ‘swimming pools’ and ‘paddling pools’ are specifically incorporated, besides parenthetical incorporation of ‘table tennis’, informing that all else, without excluding any, related to the specified activities are also. Moreover, the qualifier, ‘not specified elsewhere’ conveys the intent of ‘articles and equipment’ for activities specified elsewhere in chapter 95 of First Schedule to Customs Tariff Act, 1975 not being covered by this heading even as coverage of ‘articles and equipment’ for ‘other’ ‘sports

and out-door games’ suggests not only unspecified ‘sports and out-door games’ but also that the preceding enumerations are also sports; *de hors* such interpretation, ‘other’ in the heading is superfluous. The case of customs authorities are that the activities performed on the impugned goods are neither sports nor general physical exercise and, yet, the impugned goods have been brought within the headings, even if relegated to the residuary of residuaries as perceived by them. We cannot but infer therefrom that the heading *vis-à-vis* its internal architecture has not been considered in the impugned order.

34. Despite the generality of the activity specified in the heading, with just two of the equipment and one of sports relieved of potential for disputation, there is no paucity of enumerations below among which several are sub-classifications – distinguished by ‘-’ in the appropriate column – with detailed tariff items below at the ‘eight digit’ level while others are, owing to anchor of ‘six digit’ codes in the appropriate column, sub-headings; peculiarly, the tariff item sought by the appellant is ‘residuary’ below sub-classification and sub-heading below incorporating most of the heading while the tariff item fastened by the impugned order is ‘residuary’ below sub-heading which, too, is residuary. Adjudication of classification dispute without taking notice of that distinguishment, let alone appreciating its implications for logical reconciliation, is hardly discharge of the onus devolving on customs authorities. For sake of regularity, we delve into that aspect even if the lacuna noted by us suffices

to set aside the revision.

35. Surprisingly, or probably because of the generality, the heading has a residuary sub-heading for ‘rackets’ except for lawn tennis, for ‘balls’ that are inflatable as also for ‘balls’, other than for lawn tennis, golf and table tennis, that are not inflatable, for articles and equipment for general physical exercise, gymnastics or athletics and for articles and equipment for other sports, except table-tennis, skiing, water-sports, golf, ice skates and roller skates, racquets and balls and outdoor games with swimming pools and paddle pools not excepted. It is within the last that the adjudicating authority has situated ‘trampoline’ and ‘tag arena’ with consequential denial of preferential rate. By the logic of the adjudication order that these are used in the amusement area of malls, they are not ‘outdoor games’ which excludes them from one portion of the residuary within the heading that had several sports and games and equipment enumerated below as tariff items-cum-sub-classification or as tariff items below sub-classification besides disaggregating one portion of the description in the heading as sub-heading. Considering the brevity of description spawning a much larger brood, the present dispute is limited to coverage by the specified disaggregation or the unspecified disaggregation with any others, potentially includible in the latter, not being of significance here.

35. In accord with the rules of engagement elaborated upon *supra*, it was for the customs authorities to demonstrate that the impugned goods are

articles and equipment for sports not elsewhere specified in the chapter. There is no definition of ‘sports’ in the chapter or, for that matter, anywhere else in the statutes that could be legally referenced by ‘proper officer’; neither is there any for ‘outdoor games’ but, with self-extinguishment on factual bedrock in the show cause notice, that need not detain us. We are in the same constraining space that the Hon’ble Supreme Court was in *re Goodyear India Ltd* save without concession from either side on authority for assigning a meaning to any of the expressions. In the circumstances of lack of any guide, not only is the onus devolving on the ‘proper officer’ so difficult to discharge as not to be ventured upon, leaving it to the tax policy formulators to fix by appropriate tax rates. Even otherwise, the modules in the ‘tag arena’ are nothing but occasion of general physical exercise which covers a wide range of intense personal experiences to promote health and well-being. ‘Trampoline’ are, undeniably, equipment for gymnastic sports. Both the impugned articles do not overlap, even in passing, into ‘games’ and, hence, not susceptible to inclusion in the residuary entry for that reason. Moreover, with sub-classification hatched from the heading, *de hors* all the equipment and article, though also a sub-heading, the existence of the former requires testing for lack of match as ground for exclusion which, with the specious arguments notwithstanding, the impugned order did attempt with no appreciable impression and, therefore, exercise not worth attempting.

36. The reasons ‘assigned in the impugned order for recourse to rule 10

of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 do not pass muster as discussed *supra*. That the treaty negotiators considered certain types of sports and games to be deserving of preferential rate while not for others may have been outcome of deliberations or even deliberate national policy formulation. It may have been inadvertent slippage or from lack of domain expertise in devising template for inclusion which is not for us to remedy. That the swings for one and roundabouts for the other is fact of life and the tax collector is not empowered to suggest that ‘fun and games’ is anathema to trade and, therefore, that to be the test of disallowance, merely from the domain of customs authority having been encompassed in a trade treaty, is not tenable. The impugned goods are, under law, to be assigned rate of duty for assessment. Neither did the impugned order deploy the General Rules for Interpretation of the Tariff appended to Customs Tariff Act, 1975 for finding tariff item 9506 9990 of First Schedule to Customs Tariff Act, 1975 to be appropriate nor did our scrutiny of evidence and proposition in support of such classification generate a definitive finding to justify disturbing the declared classification. In these facts and circumstances, we find no merit in the impugned order which is set aside to allow the appeal.

(Order pronounced in the open court on 02/06/2025)

(AUGUSTIAN P A)
Member (Judicial)

(C J MATHEW)
Member (Technical)