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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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Mumbai-400 005

F.No. 380/79-80/DBK/13-RA

Date of Issue 12/02/20

ORDER NO. ⁰⁸⁻⁰⁹ /2020-CUS (SZ) / ASRA / MUMBAI/ DATED 03.2.2020
OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA ,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY
TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE
CUSTOMS ACT, 1962.

Applicant : Commissioner of Customs, Custom House,
Tuticorin.

Respondent : M/S.DCW Ltd.

Subject : Revision Application filed, under Section 129DD of
the Customs Act, 1962 against the Order-in-
Appeal No.48 & 49/2013 dated 17.05.2013 passed
by the Commissioner of Customs and Central
Excise (Appeals), Trichirapalli-620001.

ORDER

The Revision Application is filed by the Commissioner of Customs, Tiruchirapalli-620001 against the Order in Appeal No.48 & 49/2013 dated 17.05.2013 passed by Commissioner of Customs and Central Excise (Appeals), Trichirapalli-620001, in respect of Order in Original No.4527/2012 dated 31.12.2012 and 411/2013 dated 11.03.2013 both passed by the Assistant Commissioner of Customs, Custom House, Tuticorin.

2. Brief facts of the case are that M/S. DCW Ltd. had exported "upgraded Beneficiated Ilmenite (Synthetic Rutile) Ti O₂ 95 % MIN, Moisture 0.5 % Max". The goods were classified under Customs Tariff Heading 28230090 and drawback was claimed on the goods under Serial No.28230099B of the schedule of All Industry Rate of Drawback. The department has reclassified the goods exported under Customs Tariff Heading 26140020 and denied drawback benefits claimed under the said Tariff heading.

3. Aggrieved by the said decisions, the Respondents filed appeals before Commissioner (Appeal) contending that the upgraded ilmenite is a manufactured product falling under chapter 28 and not 'ore' or 'concentrate' of Chapter 26. Commissioner (Appeal) had allowed the Appeal setting aside the orders of the Original Authority.

4. The Commissioner (Appeal) Order is contested by the applicant department in the instant Revision Application with the following submissions:

- i) that the joint reading of the processes carried out by the manufacturer-exporter, and the Chapter Notes/HSN Explanatory Notes, it is clear that even if they are intended for non-metallurgical purpose, it is classifiable under Chapter 26, but

should not have been submitted to processes not normal to the metallurgical industry.

ii) the learned Appellate Authority has erred in observing that the Ore is submitted to the process of leaching, which changes its chemical composition to Fe TiO₃ to TiO₂ and as well as crystallographic structure from hexagonal crystal system to tetragonal crystal system and Only after leaching process the chemical change and crystallographic structure change occurs in the Ore. In this regard, the exporter have not submitted that they had employed any process, which is not normal to the metallurgical industries.

iii) the learned Appellate Authority by observing that the upgraded beneficiated Ilmenite (Synthetic Rutile) TiO₂ - 95% is more or less similar to pure TiO₂ has only confirmed that the product is not TiO₂ but only similar. Therefore, when there is a specific classification under Customs Tariff Item 2614, it is not correct to classify the goods under residual heading.

iv) the Hon'ble Supreme Court in the case of Speedway Rubber Co. Vs. Commissioner of C. Ex., Chandigarh reported in 2002(143) ELT 8.(S.C.) has held that

"We may notice that as per Rule 3(a) of the interpretation Rules to Central Excise Tariff Act, 1985, "The heading which provides the most specific description shall be preferred to headings providing a more general description." Accordingly, the Heading No.40.08 provides more specific description to the impugned goods than Heading No. 40.16 and hence, the specific entry should overrule the general entry."

5. Personal Hearing was held on 18.09.2019. Shri. A.M. Nandakumar, Assistant Commissioner, Tuticorin Custom House appeared on behalf of the Applicant Department and Mr. C. Sathapatty, Mr. P.R. Raman, Counsel, Mr. M. Thyagamurthy, General Manager (Legel), DCW and Mr.Ullas Kumar Mishra, Senior Manager, Corporate

Affairs appeared on behalf of the respondents. The applicants have reiterated their submissions made in Revision Application and pleaded for allowing the Revision Application.

6. The respondents have also filed written submissions pleading upholding the commissioner (Appeal) order classifying the goods under CTH28230090 chapter and their submissions are as follows:

i) the Central Excise L4 License as well as the Central Excise Registration Certificate issued by the Superintendent of Central Excise, Tiruchendur mentions the Upgraded Ilmenite under Chapter 2806.90.

ii) all their previous exports and Excise duty payments were made by classifying the disputed item i.e. upgraded Beneficiated Ilmenite under Chapter 2823.

iii) the Bureau of Mines, Bangalore vide its Report dated 12.09.2009 stated that the Ilmenite material has been changed from its chemical composition and crystal structure, therefore its optical properties are changed and the said observation read with Chapter Notes to 26 excludes the processes that alter the chemical composition from the ambit of Chapter 26.

7. The Government has carefully gone through the relevant case records, the impugned Order-in-Original, Order-in-Appeal and the rival submissions.

8. The issue to be determined is whether the "upgraded Beneficiated Ilmenite (Synthetic Rutile) Ti O₂ 95 % MIN, Moisture 0.5 % Max" is classifiable under Chapter 26140020 or Chapter 28230090 and accordingly, its eligibility for duty drawback.

9. In this regard, it is relevant to see the classification of Ilmenite under Chapter 26 of CTA which is reproduced for easy reference as under:-

| | | |
|---------------|-----|---|
| 2614 00 | - | Titanium Ores and Concentrates |
| 2614 00 10 | --- | Ilmenite unprocessed |
| 2614 00 20 | --- | Ilmenite upgraded (beneficiated Ilmenite including Ilmenite ground) |
| | --- | <i>Rutile :</i> |
| 2614 00 31 | --- | Rare earth oxides including rutile sand |
| 2614 00 39 | --- | Other |
| 2614 00 90 | --- | Other |

10. It is seen from the above classification, there are only two (3 ---) sub-headings under major heading CH 2614 - *Titanium Ores & Concentrates*. CH 2614 00 10 ---*Ilmenite Unprocessed* and CH 2614 00 20 --- *Ilmenite upgraded* (beneficiated Ilmenite including Ilmenite ground). The above description Ilmenite upgraded is qualified with the words used in the brackets i.e. Beneficiated Ilmenite clearly indicates that Ilmenite upgraded should be beneficiated, in other words, the ore should have undergone beneficiation process. In the absence of any definition of word "beneficiation" in the Chapter 26 of the CTH, the definition provided in the other enactments becomes relevant.

11. Rule 3(d) of Mineral Conservation and Development Rules, 1988 defines "beneficiation". The said rule is reproduced as under:

4.5 Mineral Conservation and Development Rules, 1988.

3. *Definitions.* - In these rules, unless the context otherwise requires -

3(d) "beneficiation" means process of minerals or ores for the purpose of

- (i) *Regulating the size of a desired produce;*
- (ii) *Removing unwanted constituents; and*
- (iii) *Improving quality, purity or assay grade of desired product.*

The above statutory definition of 'beneficiation' is for 3 purposes either for regulating the size of desired produce or removing unwanted materials for the purpose of easy transportation and also for improving the quality, purity of the product. Anyone or all the 3 activities carried out on ore/mineral is known as 'beneficiation'. By this process the unprocessed ore becomes upgraded Ilmenite.

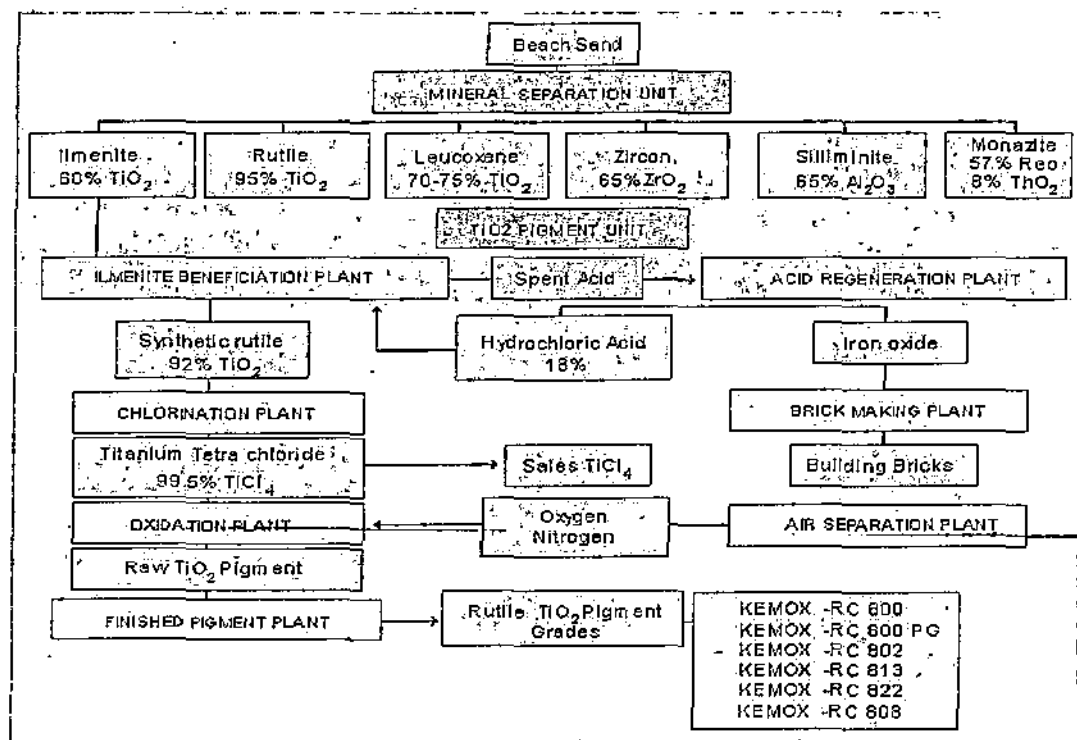
12. The Government observes that, from the above definition it is clear that removal of part or all of foreign material is envisaged for conversion of ores into concentrates. The Government further finds that the Board Circular 332/1/2012-TRU dated 17.2.2012 also clarifies that both ores and concentrates are classifiable under Chapter 26 and incorporates the definition of concentrate under HSN 26 as;

" for the purposes of Headings 2601-2617, the term concentrate applies to ores which have had part or all of the foreign matter removed by special treatments either because such foreign matter may hamper subsequent metallurgical operations or with a view to economical transport ",

Therefore, by beneficiation process the end product of ore is concentrate or upgraded ore with regard to the Chapter notes of Chapter 26. The Circular further states that removal of part or all of foreign material is envisaged for conversion of ores into concentrates; Ministry of Mines have clarified that no special treatment is involved in the crushing and screening of ore and the end product can be termed as concentrate only when the grade of ore is sufficiently improved through beneficiation; Federation of Indian Mineral Industries has also pointed

out that several processes (in addition to crushing and screening) such as milling, hydraulic separation, magnetic separation, floatation and concentrate thickening have to be undertaken for ores to be converted into concentrate. (Emphasis supplied)

13. The Kerala Minerals and Metals Ltd (KMML) is the world's first fully integrated Titanium Dioxide Plant and also India's first and only manufacturer of Rutile Grade Titanium dioxide by chloride process. The Titanium Pigment Unit is where the raw Ilmenite obtained from the Mineral separation Unit is taken for further processing, through the various stages in the Ilmenite Beneficiation Plant, Acid Regeneration Plant, Pigment Production Plant, Oxygen Plant & Utility Section. Titanium Dioxide is manufactured here using the chloride route and the process chart is as tabulated below :



14. The above flow chart throws light on the mineral separation as well as the manufacturing process of Titanium Dioxide. From the above process, it is evident that the exported goods,(Rutile) containing 95 %

TiO₂, are one of the raw material for manufacture of Titanium Dioxide pigment and requires to undergo further process and as such cannot be called Titanium Dioxide.

15. Before determining the classification the impugned goods, the Government would like to examine the respondents claim for classification of goods under chapter heading 2823 as manufactured product. Chapter 28 deals with Inorganic Chemicals; Organic or Inorganic compounds of precious metals, of rare earth metals, or radioactive elements of Isotopes. The description given by the respondents is "Upgraded Beneficiated Ilmenite (synthetic Rutile)" and not Titanium Dioxide. Contrary to the contention of the respondents, the classification details mentioned in the Central Excise License and Central Excise Registration Certificate are not binding in determining the classification of goods and further the test report cited by the respondents are no relevance, as the tested sample was not drawn from the shipment under the dispute.

16. The mere change in chemical composition does not warrant change of classification as contended by the respondents. The Governments notes that while classifying the goods whether for import or export the descriptions used in the chapter headings and sub-headings are to be literally applied and no other meaning or assumption can be made. There are catenas of judgements in support of the above proposition. The Hon'ble Supreme Court in case of Speedway Rubber Co 2002 (143) ELT 8(S.C) has held that

" Classification of goods - Heading which provides the most specific description shall be preferred to headings providing a more general description "

Further, the Hon'ble High Court of Madras in the case of CPS TEXTILES (P) LTD 2010 (255) E.L.T. 228 (Mad.) has held that

“ Drawback - Classification of goods - Description of goods as per the documents submitted along with shipping bill will be a relevant criteria for the purpose of classification, if not otherwise disputed on the basis of any technical opinion or test - Petitioner cannot plead that exported goods should be classified under different headings contrary to description given in the invoice and the shipping bill which have been assessed and cleared for export - Concurrent findings by Authorities on facts with regard to classification of goods, needs no interference by High Court - Section 75 of Customs Act, 1962.”

17. The Government observes that the illustration of manufacturing process of Titanium Dioxide, the description declared by the respondents and the Explanatory of the Chapter Notes to HSN 26 unequivocally establishes that the exported goods were upgraded beneficiated ilmenite, otherwise called Rutile, and are a raw material for manufacture of Titanium Dioxide. It requires to undergo a few more processes for being called as Titanium Dioxide and hence, does not merit classification under Chapter 2823 as Titanium Dioxide.

18. The Government, therefore, agrees with the Original authority findings that the impugned exported goods cannot be classified under Chapter 2823 and merits classification under CTH 2614 and accordingly, its admissibility for drawback under the respective drawback schedule.

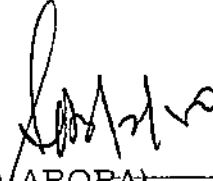
19. In view of the above discussion and findings, the Government sets aside the Commissioner (Appeals) order and upholds the Original authority Order classifying the exported goods i.e. Upgraded Beneficiated Ilmenite Ore under CTH 2614.

20. Revision Application is allowed on above terms.

21. So ordered.

ORDER No. ⁰⁸⁻⁰⁹ /2020-CUS (SZ) /ASRA/

DATED 03.2.2020



(SEEMA ARORA)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

To,
M/S. DCW Ltd,
Sahupuram,
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Tuticorin-628229.

Copy to:

1. The Commissioner of Customs, Custom House, New Harbour Estate, Tuticorin-628004.
2. The Commissioner of Customs (Appeals), No.1, Williams Road, Cantonment, Trichirapalli-620001.
3. Assistant Commissioner of Customs (DBK), Custom House, New Harbour Estate, Tuticorin-628004.

4. ~~Sr. P.S. to AS (RA), Mumbai~~

5. Guard File.

6. Spare Copy.