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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F.No. F. No. 380/41/DBK/16-RA/334 Date of Issue: 08-04-22

ORDER NO. 20/2022- CUS (WZ)/ASRA/MUMBAI DATED 07 -04- 2022
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE
CUSTOMS ACT, 1962.

Applicant : The Principal Commissioner of Customs, Mundra.

Respondent : Commissioner of Customs (Appeals), Ahmedabad's Order in
respect of M/s Pensla Steel Pvt Ltd.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Orders-in-Appeal No. Mun-
Custm-000-App-253-15-16 dated 24.11.2015 passed by the
Commissioner of Customs (Appeals), Ahmedabad.

ORDER

The impugned Revision Applications have been filed by the Principal Commissioner of Customs, Mundra, (hereinafter referred to as the department) against Orders-in-Appeal No. MUN-CUSTOM-000-APP-253-15-16 dated 24.11.2015 passed by the Commissioner of Customs (Appeals), Ahmedabad in respect of M/s Pensla Steel Pvt. Ltd. (hereinafter referred to as the Exporter) having his office at Backside Sodal, Mandir Road, Jalandhar.

2. Brief facts of the case are that the Exporter (A Merchant Exporter), had filed a Drawback claim under Section 75 of the Customs Act, 1962. The drawback claim is preferred on account of having exported Iron Press, Clip & Flat iron made of Non Alloy Steel Mundra Port. The said merchant exporter is availing/not availing Cenvat Credit and accordingly the amount of drawback is claimed at different rates on FOB of Customs Allocation in each corresponding Shipping Bills in terms of Chapter No. 82 & 83 of the Drawback Schedule mentioned as per Notification No. 92/2012-Customs (N.T.) dated 04.10.2012. The adjudicating authority after due processing found that the goods exported vide shipping bills as shown in Sr .No.1 to 5 has classified the goods under wrong H.S code and Drawback schedule. As per Customs Tariff the same should have been classified under H.S. Code 73084000 and Drawback schedule should be 730899A and drawback rate would be 8.1% or Rs. 5832/-per MT when Cenvat facility has not been availed and 2% or Rs.1440/- per MT when Cenvat has been availed. In view of the same the drawback admissible would vary and the details of the Drawback claimed/admissible and sanctioned by the exporter are as under:

Sr. No	S/B No.and date	Qty in kg	DBK rate	DBK schedule	FOB value in US\$	Exchange rate at the time of noting of S/B	FOB value in Rs	DBK claim in Rs	DBK admissible	DBK sanctioned
1.	3414280/09.01.13	13624	2%	830599B	49250	53.85	2666652	53333	19619	19619

2.	3414347/ 09.01.13	13676	2%	830599B	50008	53.85	2676775	53536	19693	19693
3.	745023/ 6.12.12	13500	7.6%	820599A	47500	49.40	2326740	176833	46535	---
4.	9399536/ 15.06.12	12950	18/kg	820599B	49900	68.40	3394008	233100	67880	---
5.	9399722/ 15.06.12	12950	18/kg	820599B	49900	68.40	3394008	233100	67880	---

Further in respect of the (i) SB at Sr. No.3 above, the drawback admissible is rejected since the EP copy of the Shipping Bill is pending and hence no benefits of customs is allowed to the exporter; (ii) EDI Systems shows as 'LEO Cancelled' in respect of SB at Sr No 4 & 5 which clearly indicates that export in respect of this SB was not allowed and hence the drawback admissible was rejected. Accordingly, Deputy Commissioner, Mundra vide OIO No. MCH/DC/1567/DBK/14-15 dated 13-02-2015, sanctioned the drawback amounting to Rs.39,312/- and rejected an amount of Rs.7,10,590/-.

Aggrieved by the said Order, the Exporter filed appeal with the Commissioner Appeals, against the drawback rejected. Commissioner Appeal vide OIA No. MUN-CUSTOM-000-APP-253-15-16 dated 24.11.2015 held that:

- i) The appeal filed by the exporter is allowed and the classification declared by them is upheld and the lower authority was directed to recalculate and sanction the drawback, adhering the principle of natural justice.
- ii) For the drawback claim amount pertaining to Sr.No.3to 5 of the above Table, the lower authority was directed to confirm the veracity of the documents and sanction the drawback, adhering the principle of natural justice.

3. Aggrieved by the aforesaid Commissioner Appeal's Order the department filed the impugned Revision Application mainly on the grounds that:

- i) The appellate authority has decided the case without keeping in view that the classification of export goods are decided following the General Rules of Interpretation. Accordingly, classification of goods in the

Nomenclature shall be governed by the following principles of General Rules for the interpretation of the Harmonized System. The said is reproduced hereunder:

"Rule-2(a)- "Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or failing to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled.

Rule-2(b)- "Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule-3."

Rule (3) of General Rules for the Interpretation of First Schedule, "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 heading 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 goods. "

(b)

(c)"

ii) The exporter has exported the goods viz. Clip (Door& Furniture fittings) made of Non Alloy Steel and has classified the said goods under C.T.H. 83059020 with Drawback Schedule 830599B. Clips made of Non Alloy Steel are generally used as Scaffolding. The meaning of Scaffolding, also called staging, is a temporary structure used to support people and material in the construction or repair of buildings and other structures.

As per Customs Tariff the goods classifiable under the C.T.H. 8305 are- *"Fittings for loose-leaf binders of files, letter clips, letter corners, paper clips, indexing tags and similar office articles, of base metal; staples in strips (for example, for offices, upholstery, packaging), of base metal".*

As per the Customs Tariff, the goods specified under C.T.H. 7308 are "*Structures (excluding prefabricated buildings of heading 94.06) and parts of structures (for example, bridges and bridge-sections, lock gates, towers, lattice masts, roofs roofing frameworks, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillars and columns), of iron or steel; Plates, rods, angles, shapes, sections, tubes and the like prepared for use in structures of iron and steel*",

Therefore, the goods exported are "Clip (Door & Furniture fittings) made up of Non Alloy Steel" are nothing but parts of the main products of scaffolding i.e. temporary structure used to support people and material in construction or repair or building and other structures and thus more appropriately classifiable under C.T.H. 7308 and Drawback Schedule is 730899A.

iii) The exporter has exported "Iron Press/Flat Iron (Press) made up of Non Alloy Steel" and has classified the said goods under C.T.H. 82055190 with Drawback Schedule 820599A. "Iron Press / Flat Iron (Press) made up of Non Alloy Steel" are generally used as Scaffolding.

As per Customs Tariff the goods classifiable under the C.T.H. 8205 are- "*Hand tools (including glaziers diamonds), not elsewhere specified or included; below lamps; vices, clamps and the like other accessories for and parts of machine tools: anvils: portable forges; hand or pedal-operated grinding wheels with frame works*".

Therefore, the goods exported "Iron Press / Flat Iron (Press) made up of Non Alloy Steel" are nothing but parts of the main products of scaffolding i.e. temporary structure used to support people and material in construction or repair or building and other structures and thus more appropriately classifiable under C.T.H. 7308 (supra) and Drawback Schedule is 730899A.

v) The appellate authority did not go into facts, that the goods/items exported by the exporter are Clips, Iron press made of non-alloy Steel, Flat Iron made of Non-alloy steel etc which are nothing but part of the main products of scaffolding i.e. temporary structure used to support people &

material in construction or repair or building and other structure and are more appropriately classifiable under Chapter 7308.

vi) Though the goods were declared by the exporter by classifying them under C.T.H. 8205/8305 under the claim of drawback, the same were actually parts of scaffolding items which are appropriately classifiable under C.T.H. 7308.

In view of the above, the department prayed to set aside the impugned Order in Appeal to the extent of holding that the classification declared by the exporter is correct and to uphold the classification decided by the adjudicating authority.

4. Personal hearing in the case was fixed for 26.10.2021. Shri Amit Laddha, Advocate, attended the online hearing and submitted, he submitted that classification by Commissioner (Appeal) is in Order.

5. Government has carefully gone through the relevant case records available in case files, written & oral submissions and perused the impugned Order-in-Original, Order-in-Appeal and the Revision Application filed by the department.

6. Government observes that the issue involved in the Department's revisionary application, is the classification of the exported goods viz Clip made of Non alloy steel, Iron Press made of Non alloy steel and Flat Iron made of Non Alloy steel under 83059020 and 82055190 and drawback claimed by the Exporter under the corresponding drawback schedule. The adjudicating authority vide OIO No. MCH/DC/1567/DBK/14-15 dated 13.02.2015 found that the aforesaid products are generally used as Scaffolding and appropriately classifiable under Heading 73084000 and the Drawback Schedule is 730899A. The Appellate Authority held that classification declared by the Exporter is correct and to recalculate and

sanction the drawback. The department has filed the instant Revision Application seeking the classification of the said goods under 73084000.

7.02 As per Customs Tariff the goods falling under Chapter 8305 are "*Fittings for loose-leaf binders of files, letter clips, letter corners, paper clips, indexing tags and similar office articles, of base metal; staples in strips (for example, for offices, upholstery, packaging), of base metal*".

As per Customs Tariff the goods classifiable under the C.T.H. 8205 are- "*Hand tools (including glaziers diamonds), not elsewhere specified or included; below lamps; vices, clamps and the like other accessories for and parts of machine tools: anvils: portable forges; hand or pedal-operated grinding wheels with frame works*".

As per the Customs Tariff, the goods specified under C.T.H. 7308 are- "*Structures (excluding prefabricated buildings of heading 94.06) and **parts of structures** (for example, bridges and bridge-sections, lock gates, towers, lattice masts, roofs roofing frameworks, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillars and columns), **of iron or steel**: Plates, rods, angles, shapes, sections, tubes and the like prepared for use in structures of iron and steel)*".

On going through the above Chapters, Government finds that the heading Ch 7308 covers complete or incomplete metal structures, as well as parts of structures. For the purpose of this heading, these structures are characterized by the fact that once they are put in position, they generally remain in that position. Parts of structures include clamps and other devices, specially designed for assembling metal structural elements. The impugned goods in the instant case like Clips made of Non alloy steel, Flat Iron/Iron Press made of Non alloy steel, are used for the construction of the scaffold.

7.03 Government finds that in the instant case, the Exporters are manufacturers and exporters of Scaffolding fittings. **Scaffold or staging**, is a temporary structure used to support a work crew and materials to aid in the construction, maintenance and repair of buildings, bridges and all other man-made structures. The impugned goods in the instant case like Clips, Flat Iron/Iron Press, are used for the construction of the scaffold/or are parts of the complete structure namely Scaffold.

7.04 The Government finds that the classification of any product should be determined in adherence to the guidelines under Rule 3(a) of the General rules to the Schedule to the Customs tariff Act, 1975. The rule states that

"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 heading 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 goods. "

In view of the above General rules of Interpretation, Government notes that the impugned items exported by the Exporter as detailed above are nothing but part of the main products of scaffolding i.e. temporary structure used to support people and material in construction or repair or building and other structure and are more appropriately classifiable under 'Equipment for Scaffolding,...' under Chapter 7308 40 00.

7.05 Further Government observes that the Exporter has **not contested anywhere, neither before this authority nor have they questioned it in the grounds of appeal before the Commissioner (Appeals) and before the adjudicating authority, that the exported goods are not goods or fitting used for scaffolding. They have merely stated that they have correctly classified the products.** The exporter had been claiming more drawback

than what they were entitled to by classifying the export goods as stated above. These goods merit classification under Ch 7308 and the lower adjudicating authority has accordingly sanctioned the eligible drawback.

8. In view of above findings with respect to the department's revisionary applications regarding classification issue, Government modifies the impugned Orders-in-Appeal No. MUN-CUSTOM-000-253-15-16 dated 24-11-2015 passed by the Commissioner of Customs (Appeals), Ahmedabad and affirms the classification decided by the adjudicating authority.

9. These Revision Applications are disposed of on above terms.


7/6/22
(SHRAWAN KUMAR)

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

ORDER No. 120/2022-CUS(WZ)/ASRA/Mumbai dated 07.4.2022

To,

1. M/s. Pensla Steel Pvt. Ltd.,
Backside Sodal, Mandir Road,
Jalandhar, Punjab-144004

Copy to:

1. The Principal Commissioner of Customs, 5B, Port User Building, Adani
Port, Mundra, Kutch, Gujarat-370421
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Notice Board.