

SPEED POST



F. No. 375/ 15/ DBK/ 2013-R.A.
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue... 17/11/19...

Order No. 26/19-Cus dated 16-10-2019 of the Government of India, passed by Smt Mallika Arya, Principal Commissioner & Additional Secretary to the Government of India, under 129 DD of the Customs Act 1962.

Subject : Revision Applications filed under 129 DD of the Customs Act 1962 against the Order-in-Appeal No. CC (A)/ Cus/ 237/ 2013 dated 29.04.2013 passed by Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, T-3, Delhi-110037.

Applicant : Metenere Limited

Respondent : Commissioner of Customs, New Customs House, Near IGI Airport, T-3, Delhi-110037

ORDER

A Revision Application No. 375/ 15/ DBK/ 2013-R.A. dated 02.07.2013 has been filed by M/s Metenere Limited, (hereinafter referred to as applicant) against Order-in-Appeal No. CC (A)/ Cus/ 237/ 2013 dated 29.04.2013 passed by Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, T-3, Delhi-110037 wherein drawback claim has been rejected and order for finalization of provisional assessment in respect of 48 shipping bills under Central Excise Tariff Heading 7115 at NIL rate of drawback has been upheld. However the penalty of Rs. 10,000/- imposed on the applicant under Section 117 of the Customs Act, 1962 was waived on the ground that this was merely a classification dispute.

2. The brief facts leading to the present proceedings are that the applicant had cleared 'Sputtering Targets' by classifying them under Central Excise Tariff Heading 8543 instead of under 7115 and claimed the duty drawback of Rs.1,98,66,330/-. The revision application has been filed on the grounds that Sputtering Targets are classifiable under Central Excise Tariff Heading 8543 and not under 7115. The applicant prayed that Order-in-Appeal No. CC (A)/ Cus/ 237/ 2013 dated 29.04.2013 be set aside and drawback claim amounting to Rs. 1,98,66,330/- be sanctioned to them.

3. Personal hearing was fixed on 09.08.2019. No one from the applicant appeared for Personal hearing on the said date. Sh. Babu Lal, Superintendent appeared on behalf of the respondent. The applicants vide their letter dated 09.08.2019 submitted that they have also misplaced their Revision Application alongwith documents and requested for the same. Another date for personal hearing was fixed on 26.08.2009. Sh. Prem Ranjan Kumar, Advocate appeared for the applicant and requested for another date for personal hearing on 11.09.2019. Dr. Radhe Tallo, Deputy Commissioner (DBK), Air Cargo Export, Delhi appeared on 26.08.2019 on behalf of the Respondent and submitted a written submission. He submitted that the applicant had exported the impugned goods during the period August 2009 to March 2011 under claim of Drawback @1.8% from the Air Cargo Complex, IGI Airport, New Delhi. However on enquiry the respondents found that the goods were classifiable under 7115 in line of Chapter note 1 (b) of Chapter 71 of CE Tariff Act, 1985 which reads as under: "*subject to chapter note 1 (a) to section VI and except as provided below, all article consisting wholly/ partly as precious metal or metal clad with precious metal are to be classified in this chapter.*" Sputtering targets of silver have been classified in chapter 71 vide Notification no. 8/ 2003- cus dated

13.01.2003. Sputtering target of aluminium have been classified under chapter 76 vide notification no. 25/ 99-cus dated 28.02.1999.

The Applicant reiterated the points mentioned in written submissions during personal hearing. Another date for personal hearing was given to the applicant on 11.09.2019 and the applicant appeared on the said date. The applicant has stated that the respondents have relied upon Chapter note 1 (b) of Chapter 71 of CE Tariff Act, 1985. However chapter note 3 (k) below this note excludes 'machinery, mechanical appliances or electrical goods or parts thereof of Section XVI'. They further submitted that classification cannot be decided by referring to notification no. 25/ 99-cus dated 28.02.1999. The impugned goods fall under Tariff Heading 8543. The Applicants submitted write-up and documents in support of their contention made by them during their personal hearing on 11.09.2019. The applicant has also submitted a letter dated 12.03.2008 from the Director, National Commodity Specialist Division, New York regarding a tariff classification ruling. The referred "Sputtering Targets" are made of 97% silver and are used in the manufacturing of DVDs and has to be classified under 8543.90.1100 (under subheading 8543.70) as per Harmonized System of Nomenclature. The applicants have also submitted a letter dated 04.01.2002 from the Director, Customs Commodity Specialist Division, New York which says that following a World Customs Organization decision Sputtering Machines imported into the United States are classified in subheading 8543.89 and parts of such machines are classified in subheading 8543.90. The applicants also submitted a copy of the Registration Certificate under the Customs (import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 issued by the Deputy Commissioner of Jammu Division wherein the imported goods have been mentioned as Gold Concentrates (Tariff 26169010) and excisable goods manufactured from the imported goods have been mentioned as *Used for home consumption for manufacturing Sputtering Targets (Tariff 85439000)*. The applicant has submitted a letter dated 27.04.2010 from Assistant Commissioner (Export), Air Cargo Complex, IGI Airport addressed to the Deputy Commissioner (DBK) regarding finalization of impugned 48 shipping bills of the applicants and stated that the duty Drawback has not been released.

4. The applicant has relied on the Supreme Court judgment in the Pankaj Jain Agencies vs. UOI [1994 (72) ELT 805 S.C.] wherein it has been contended that "Machinery parts not specifically described in a heading of Customs Tariff Act, 1975 /

Central Excise Tariff Act, 1985 do not for that reason become excluded from levy of statutory duty - Such parts to be classified in an appropriate heading by applying relevant Section Notes and Chapter Notes". The applicant has, therefore, contended that sputtering target being a specific item and identifiable with a particular physical vaporization deposit machine merits classification under Chapter 85.

5. The Government has examined the case on the basis of the relevant case records, the Commissioner (Appeals)'s order and the Revision application. The Commissioner (Appeals) has come to a conclusion vide the impugned Order-in-Appeal that *the sputtering targets are essentially of gold concentrate, which provide protective coating and get used up during the process and as a result further replenishment will be necessary. He agreed with the lower authority that the impugned goods are in the nature of toners, which get used up during the process of use but these do not get classified as part of the machine. Thus the impugned goods are in the nature of consumable having independent identity, these are essentially used by the appropriate machine, but these do not form part of the machine under Chapter 85.*

No new facts have been produced by the applicant before the revisionary authority contradicting the said observation of Commissioner (Appeals).

Rule 3 (a) of the General Rules for the Interpretation of the Harmonized System of Nomenclature (HSN), on which the Schedule to the Customs Tariff Act, 1975 is based, reads as under:

"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."*

Moreover the Chapter note 1 (b) of Chapter 71 of Customs Tariff Act, 1975 reads as under:

"1. *Subjects to Note 1 (a) to Section VI and except as provided below, all articles consisting wholly or partly: (b) Of Precious metal or of metal clad with precious metal, are to be classified in this Chapter."*

Section Notes and Chapter Notes of Schedule to Customs Tariff Act, 1975 are in line with the General Rules for the Interpretation of the Harmonized System of Nomenclature. Therefore a combined reading of Rule 3 (a) of HSN and Chapter note 1 (b) of Chapter 71 of the Schedule to the Customs Tariff Act (CTH), 1975 makes it clear that the impugned items merit classification under Chapter 71.

Although a notification cannot decide the classification of an item it is observed that silver sputtering target have been mentioned under Chapter 71 under Notification No. 8/ 2003- Customs dated 13.01.2003 by CBIC.

Apex Court in Pankaj Jain Agencies vs. UOI [1994 (72) ELT 805 S.C.] has held that "Machinery parts not specifically described in a heading of Customs Tariff Act, 1975 / Central Excise Tariff Act, 1985 do not for that reason become excluded from levy of statutory duty - Such parts to be classified in an appropriate heading **by applying relevant Section Notes and Chapter Notes**". Therefore the impugned goods will fall under Chapter 71 of Schedule to CTH 1975 in light of the above judgment of the Apex Court.

6. In view of the above discussions, the Government does not find any deficiency in the Commissioner (Appeals)'s order and the revision application filed by the applicant is rejected.


(MALLIKA ARYA)

Additional Secretary to the Government of India

1. Metenere Limited, 138-39 Ghazipur near Bharat Petrol Pump, Delhi-110096.

2. Commissioner of Customs, New Customs House, Near IGI Airport, T-3, Delhi-110037.

G.O.I. Order No. 26 /19- dated 16/10/19

Copy to:-

1. Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, T-3, Delhi-110037.

2. P.S. to A.S. (Revision Application)

3. Guard file.

ATTESTED


(Nirmala Devi)

Section Officer (R.A.)