

THE AUTHORITY FOR ADVANCE RULINGS
(Central Excise, Customs & Service Tax)
New Delhi

Present:

Justice V.S. Sirpurkar (Chairman)
Shri S.S. Rana (Member)
Shri R.S. Shukla (Member)

The 15th day July, 2016

Ruling No. AAR/CE/ 19 /2016
In
Application No. AAR/44/CE/14/2015

Name and address of the applicant: T.T. Recycling Management India Private Limited, Karnataka

Commissioner concerned : Commissioner of Central Excise
Bangalore-II, P.B. No. 5400
C.R. Building, Queen's Road
Bangaluru-560001

Present for the Applicant : Shri Badrinath NR, Advocate

Present for the Department : Shri Amresh Jain
Authorised Representative

Ruling

T. T. Recycling Management India Private Limited (hereinafter also referred to as applicant) is a resident Private Limited Company. Applicant proposes to source different grades of steel scrap from the generating factories and approved vendors within India as well as outside India. The scrap so procured in such a variety of forms and grades is neither suitable for the foundries nor suitable for steel mills as a raw material for its manufacturing activity. Steel scraps are classified into various grades, primarily on the basis of chemical / composition of the scrap e.g. High Manganese and Low Manganese. The different grades of metal scrap will then be identified from analyzing the collected steel scrap based on chemical composition test report issued by the third party lab and

sizes as per each shape by manual process and steel scrap will be segregated by manual process with the help of conveyor and overhead crane after analyzing process. Segregation mainly will be done in three categories i.e. High Manganese, Low Manganese and Re-use Scrap. The process of blending is the term used to describe the up-valuation of random raw materials by mixing various Low manganese and High manganese scraps into homogeneous product i.e., High Manganese blending scrap, Low Manganese blending scrap and Re-use scrap that is as per customer specifications. The baling process involves compacting the steel scrap into cube form for direct supplies into furnace. In this process, the baling machine is used to convert the blended loose scrap into cube form for the direct supplies into the furnace. This process of blending and baling is carried out by manual as well as mechanical process with the help of specially trained workers operating special purpose cranes and machines to carry out this operation along with skilled workmen and supervisors. This process is to ensure that the eventual mix shows precisely the chemistry / composition, which is required / usable by the foundries and steel mills as a raw material for its manufacturing activity. It eventually results into the production of blended metal scrap of the requisite grade. Inspection will be done based on chemical composition test report whether baled blended metal scrap matches customer specifications. Applicant further submits that the blending and other process as explained above, as per customer specifications, will bring into existence new goods, which inter-alia will be used as raw material in the foundries or in the steel mills for its manufacturing activity.

2. Questions raised by the applicant before this Authority is as under:

1. *Whether processing of secondary raw materials (steel scrap of difference and variable composition) into blended steel scrap is liable for payment of Central Excise duty under the provision of the Central Excise Act, 1944?*
2. *Whether produced "blended metal scrap" can be classified under Chapter 72044900 of the Central Excise Tariff Act, 1985?*

3. Revenue inter-alia submits that activity proposed to be undertaken by the applicant does not have any essential difference in the identity between the original commodity and proposed article, as both would come under the category of scrap. Further, the original commodity i. e., stainless steel scrap shall not lose its identity after processing and continue to remain as scrap. Therefore, this process does not amount to manufacture as defined in Section 2(f) of the Central Excise Act or under Section or Chapter Note.

4. It is observed from the process of production of blended steel scrap from unprocessed steel scrap that it involves a number of steps. The input is unprocessed steel scrap and output is blended steel scrap. The blended steel scrap is produced with required chemical composition by mixing various Low manganese and High manganese

scraps and is fit to be used as raw material in the manufacture of various products of steel. Further, blended steel scrap is not put to the same use to which the unprocessed steel scrap is put and vice versa. Therefore, input i.e. unprocessed steel scrap is distinct from output i.e. blended steel scrap. Though both (input and output) would fall under the category of scrap, but are completely different types of scraps. Further, processing of unprocessed stainless steel scrap into blended stainless steel scrap would result into input (unprocessed stainless steel) losing its identity and new commodity i.e. blended stainless steel scrap coming in existence. Therefore, when said unprocessed steel scrap undergoes above process, a new product saleable in the market, which is having a distinct identity and use, comes into existence and is known in the commercial market by a different name. Further, blended steel scrap possesses higher utility than the unprocessed scrap steel. Therefore, applicant's contention that the production of blended steel scrap by processing unprocessed scrap steel amounts to manufacture under the Central Excise Act, 1944, is correct.

5. The law is settled by way of number of judicial pronouncements and provision of law that Excise duty is a duty on the manufacture of goods. Manufacture is complete as soon as the raw material undergoes some change by the application of one or more process. If a new substance is brought into existence or if a new or different article having a distinct name, character or use comes into being from a particular process or processes, such process or activity would amount to manufacture. The moment there is a transformation into a new commodity commercially known as a separate and distinct commodity having its own character and use, 'manufacture' takes place.

6. Applicant has aptly relied on the decision of Hon'ble Supreme Court in the case of Mamta Surgical Cotton Industries, Rajasthan Versus Assistant Commissioner (Anti-Evasion), Bhilwara, Rajasthan (2014 (4) TMI 593 –SC). In this case, the appellant was manufacturing surgical cotton from raw cotton. Hon'ble Supreme Court held that said process is manufacture as surgical cotton has different name, character and use. Further, raw cotton loses its original form. Relevant paragraph of the case is reproduced as under;

35. It is trite to state that "manufacture" can be said to have taken place only when there is transformation of raw materials into a new and different article having a different identity, characteristic and use. While mere improvement in quality does not amount to manufacture, when the change or a series of changes transform the commodity such that commercially it can no longer be regarded as the original commodity but recognized as a new and distinct article. In the instant case, after going through the various steps that are carried out by the assessee for getting surgical cotton from raw cotton, we can certainly say that cotton has undergone a change into a new commercially identifiable commodity which has a different name, different character and different use. The process of transformation is not merely processing to improve quality

or superficial attributes of the raw cotton. The cotton loses its original form and it marketed as a commercially different and distinct product. This aspect of the matter is rightly noticed by the High Court by relying upon the decision of this Court in Empire Industries case (supra) wherein this Court has explained the meaning of the expression 'manufacture' as when the result of the treatment, labour and manipulation a new commercial commodity has emerged which has a distinctive new character and use.

7. The case before us is akin to case of Mamta Surgical Cotton Industries. In the instant case, blended stainless steel scrap is manufactured from unprocessed steel scrap. This blended scrap is called by a different name. It also has a different use and character. Further, unprocessed steel scrap loses its original form. Therefore, ratio of said Hon'ble Supreme Court judgment is applicable to the present case.

8. Further, applicant submits that this Authority held that the process of conversion of various grades of stainless steel scrap ("metal scrap") to "blended metal scrap" amounts to manufacture in the case of M/s ELG India Private Limited. (AAR/CE/02/2013). The relevant extract of the order is reproduced as under;

42. The steps to be put in place in the proposed activity have been detailed. It has not been denied that scrap of specific grades alone can be used in the manufacture of stainless steel and that the processes to be adopted by the applicant would result in the transforming of their raw materials, namely, metal scrap of assorted sizes grades, composition etc, into metal scrap of specific grades which is directly usable for manufacture of stainless steel. Therefore what emerges from the processes would be a product having distinct identity and use, different from the raw material from which it is made.....

9. Revenue submits that above ruling in case of M/s ELG India Private Limited was that the conversion of various grades of stainless steel scrap to blended metal scrap amounts to manufacture and said ruling is binding only on the applicant, concerned Commissioner and his subordinates in that case, as also in respect of the transaction in relation to which the ruling had been sought. In this regard, Revenue relied on the judgment of the Hon'ble Supreme Court in Columbia Sportswear Company vs. Director of I.T. Bangalore 2012(283) ELT 0321 SC. Relevant portion of the judgment is reproduced as under;

The Authority thus, held that the advance ruling of the Authority is binding in the case of one transaction only and the parties involved in respect of that transaction and for other parties, the ruling will be of persuasive nature. The Authority, however, has clarified that this is not to say that a principle of law laid down in a case will not be followed in future. This decision of the Authority in Cyril Eugene Pereira, In re. (supra) has been taken note of by this Court in Union of India & Anr. V. Azadi Bachao Andolan

& Anr. [2003] 263 ITR 706 at 742 to hold that the advance ruling of the Authority is binding on the applicant, in respect of the transaction in relation to which the ruling had been sought and on the Commissioner and the Income-Tax authorities subordinate to him and has persuasive value in respect of other parties. However, it has also been rightly held by the Authority itself that this does not mean that a principal of law laid down in a case will not be followed in future.

10. It is quite clear from the above judgment of the Hon'ble Supreme Court that the ruling in case of M/s ELG India Private Limited will have persuasive value and further principles laid down regarding manufacture of blended metal scrap from various grades of stainless steel scrap, can also be followed in the present case.

11. It is observed that second issue raised by the applicant i.e., in respect of classification of "blended metal scrap" under Chapter 72044900 of the Central Excise Tariff Act, 1985 has rightly not been opposed by the Revenue. It is noticed that blended metal scrap is covered under Chapter Head No. 72044900 in the First Schedule – "Others – Ferrous waste and scrap" under the Central Excise Tariff Act, 1985

12. In view of the above, we rule as under;

1. *Processing of secondary raw materials (steel scrap of difference and variable composition) into blended steel scrap is liable for payment of Central Excise duty under the provision of the Central Excise Act, 1944.*
2. *Produced "blended metal scrap" can be classified under Chapter 72044900 of the Central Excise Tariff Act, 1985.*

(S.S.Rana)
Member(R)

(V.S.Sirpurkar)
Chairman

(R.S.Shukla)
Member (L)