

CUSTOMS AUTHORITY FOR ADVANCE RULINGS
New Customs House, Ballard Estate, Mumbai – 400 001

The 24th of May, 2021
Ruling No. CAAR/Mum/ARC/11/2021
In
Application No. CAAR/Mum/ARC/8/2021

Name and address of the applicant : M/s. ELG India Pvt Ltd,
608, Srishti Plaza, Off Saki Vihar Road,
Powai, Mumbai, Maharashtra- 400072

Commissioner concerned : The Commissioner of Customs (NS-III),
Jawaharlal Nehru Custom House, Sheva, Tal
Uran, District Raigad, Maharashtra - 400707

Present for the application : Sh. Kumar Visalaksh, Advocate (Economic
Laws Practice)
Sh. Archit Gupta, Advocate, (Economic
Laws Practice)
Sh. Rahul Khurana, Advocate, (Economic
Laws Practice)

Present for the Department : None

Ruling

An application dated 27.09.2013 for advance ruling was filed by M/s. ELG India Pvt. Ltd. (the applicant, here-in-after) with the Secretary to the erstwhile Advance Rulings Authority, New Delhi (the AAR, here-in-after) on 15.10.2013. The issue for determination was whether the benefit of concessional rate of duty under Entry No. 333 of the Notification No. 12/2012-Cus., dated 17.03.2012, as amended vide Notification No. 25/2013-Cus., dated 08.05.2013 would be available to the stainless-steel scarp proposed to be imported by the applicant. Since the applicant stated that they had not decided the port of import, the secretariat of the AAR requested the Chairman, Central Board of Excise and Customs to designate a Commissioner of Customs in terms of Regulation 10 of the Authority for Advance Rulings (Central Excise, Customs, and Service Tax) Procedure Regulations, 2005 for the purpose of representing the government. The CBEC, vide an order dated 01.11.2013, issued from F. No. 275/74/2013-Cx.8A, appointed the Commissioner of Customs (Import) of Mumbai Zone - I for the said purpose. The comments of the said Commissioner to the application for



advance ruling was received in the secretariat of the AAR on 06.01.2014 which was shared with the applicant and their rejoinder, received on 20.02.2014 is on record.

2. The application came up for admission on 31.07.2015, and since there was no objection for its admission from the side of the government, it was admitted. Subsequently, the matter came up for oral arguments on several occasions, and after several adjournments, the AAR, in their order dated 19.02.2016, said that, 'Arguments heard which remain inconclusive. Put up the matter on 22nd April, 2016.' Subsequently, the applicant submitted expert opinion on 18.04.2016 which was shared with the authorized representative of the government. The Commissioner of Customs (Import), Mumbai Zone - I has also furnished his comments dated 08.07.2016 on the expert opinion submitted by the applicant. The arguments from both sides, after adjournments, were concluded on 10.03.2017 and the ruling was reserved with the stipulation that both the sides may file their written submissions within 3 weeks. However, no ruling was actually issued and on 11.08.2017 another hearing took place and it was ordered that the application shall be heard afresh as Member(R) had joined the bench recently. The matter was again finally heard on 27.10.2017, the government's representative was given 2 weeks' time to file his written submissions and the ruling was reserved. However, no ruling has been actually issued and on the appointment of Customs Authority of Advance Rulings under Section 28EA of the Customs Act, 1962; the secretariat of the AAR transferred the application to CAAR, Mumbai in February, 2021.

3. Since, the original application for advance ruling was filed in 2013, and the statutory period of limitation for pronouncing a ruling was over, it appeared that the said application had already lapsed before its transfer to the CAAR, Mumbai. Therefore, the Secretary to the CAAR, Mumbai, on a constructive interpretation of law and as a trade facilitation measure, informed the applicant to re-apply in the prescribed form if they still wished to receive a ruling on this subject. The applicant expressed their desire to pursue the matter and also stated that there is no change in the factual scenario since the date of original filing. After scrutiny of the said transferred application, the Secretary to the CAAR, Mumbai informed the applicant that they had paid Rs. 2500/- as application fee which has since been revised and also to indicate the port through which they wish to import. In reply, the applicant has paid the applicable fee and has informed that they wish to import from Jawaharlal Nehru Port. Accordingly, the application for advance ruling was emailed to the Principal Commissioner of Customs, Nhava Sheva - III for his comments. However, no reply has been received.

4. The matter was posted for hearing on 17.05.2021 on virtual mode. The applicant was represented by Sri Kumar Visalaksh and others. During the hearing it was pointed out that their contention regarding the factual backdrop of the application remaining unchanged is not correct as the exemption notification, the benefit of which was originally sought has since been superseded and no longer exists. Even the superseding notification has undergone significant changes and therefore, for all practical purposes it appears that the advance ruling application has been rendered irrelevant. The learned counsel sought two days' time to submit additional submissions. The reply of the applicant dated 18.05.2021 has been



received. In the said reply, the applicant has stated that the Notification No. 50/2017-Cus., dated 30.06.2017, after the amendment vide Notification No. 02/2021-Cus., dated 01.02.2021 allows all goods falling under heading 7204 of the customs tariff to be imported at 'Nil' rate of duty up to 31.03.2022. However, to obviate any future dispute/confusion, they would still like to receive an advance ruling w.r.t. stainless-steel scrap for melting.

5. I have gone through the records of the proceedings. The applicant, in this case, propose to import different grades of metal scrap classifiable under entry number 720421 of the Indian customs tariff, process the said metal scrap to produce blended metal scrap of the grade required by its customers. The processing to be undertaken by the applicant include radioactivity check, grade-wise sorting, cutting/shredding/crushing/sizing, bundling and briquetting, and blending. In the aforementioned factual backdrop, the question on which the advance ruling has been sought in this case is whether the import of stainless-steel scrap would be eligible for the benefit of concessional rate of duty as provided under Sr. No. 333 to the Notification No. 12/2012-Cus., dated 17.03.2012 as amended vide Notification No. 25/2013-Cus., dated 08.05.2013. The said entry in the relevant exemption notification is reproduced below: -

333. 7204 21 Scrap of stainless steel, for the purpose of melting Nil - -

A perusal of the tariff shows that Notification No. 12/2012-Cus., dated 17.03.2021, as amended was superseded vided Notification No. 50/2017-Cus., dated 30.06.2017. Therefore, the applicant's initial contention that there has been no factual change in respect of the application since its original filing doesn't appear to be correct. In their subsequent submissions, the applicant has recognised this fact. A perusal of the superseding notification reveals an identical entry, as reproduced below: -

369. 7204 21 Scrap of stainless steel, for the purpose of melting 2.5% - -

I also find that the said notification has been amended several times since and the amendments carried out vide Notification No. 2/2021-Cus., dated 01.02.2021 are significant in the context of the present advance ruling application. The relevant changes are reproduced below: -

(55) for S. No. 369 and the entries relating thereto, the following S. No. and entries shall be substituted, namely: -

"369. 7204 All goods 2.5% - -"

I have also taken note of the following entry of the said amending notification: -

(54) for S. No. 368 and the entries relating thereto, the following S. No. and entries shall be substituted, namely: -

"368. 7204 All goods NIL - -"



The following amendment to the first proviso to the Notification No. 50/2017-Cus., dated 30.06.2017 vide the Notification No. 2/2021-Cus., dated 01.02.2021 is also significant in the context of the present advance ruling application. The amended proviso reads as under: -

II. in the first proviso, -

(1) for clause a), the following clause shall be substituted, namely: -

“(a) the goods specified against S. Nos. 368 of the said Table on or after the 1st day of April, 2022.”;

The effect of the amendments carried out w.e.f. 01.02.2021 is that the benefit of ‘NIL’ rate of duty available to all goods falling under heading 7204 of the tariff would cease w.e.f. 01.04.2022, and w.e.f. the said date all goods of heading 7204 would attract basic customs duty @ 2.5%. In view of such a position, the application for advance ruling has become infructuous. I have also considered the applicant’s request for a ruling as per their original request on the issue of exemption to stainless-steel scrap for the purpose of melting so as to obviate any future confusion/dispute. I have perused all the arguments advanced by the applicant to justify their request. However, I am afraid, it is not permissible in law to entertain the request of the applicant to issue an advance ruling on a hypothetical question. Advance rulings can be sought only in respect of the issues permitted under section 28H of the Act and such ruling would remain in force, as per the provisions of section 28J(2) of the Act, only till the law or facts remain unchanged. Therefore, advance rulings can only be sought only w.r.t. law or facts that exists at the relevant time and not w.r.t. some hypothetical proposition. In this case, the law/facts existing at the time of original application are no longer existing and therefore, the request for an advance ruling on the basis of such non-existent law/facts merit rejection.

Accordingly, the application filed by M/s. ELG India Pvt. Ltd. is rejected as infructuous.




(M.R. MOHANTY)
Customs Authority for Advance Rulings,
Mumbai

This copy is certified to be a true copy of the ruling and is sent to :-

1. M/s. ELG India Pvt Ltd, 608, Srishti Plaza, Off Saki Vihar Road, Powai, Mumbai, Maharashtra- 400072 Email: mayank@elg.in
2. The Commissioner of Customs (NS-III), Jawaharlal Nehru Custom House, Sheva, Tal Uran, District Raigad, Maharashtra – 400707
Email: commr-ns3@gov.in
3. The Customs Authority for Advance Rulings, New Delhi.
Email: cus-advrulings.del@gov.in
4. The Principal Chief Commissioner of Customs, Mumbai Customs Zone-I, Ballard Estate, Mumbai -400001.
Email: ccu-cusmum1@nic.in
5. The Chief Commissioner(AR), Customs Excise & Service Tax Appellate Tribunal (CESTAT), West Block-2, Wing-2, R.K. Puram, New Delhi - 110066.
Email: cdrcestat123@gmail.com, ccar.cestat-delhi@gov.in
6. The Member (L & J), CBIC, New Delhi.
Email: mem.lj-cbic@nic.in
7. Guard file.




(Ashok Kumar)
Secretary,

Customs Authority for Advance Rulings, Mumbai