



सीमाशुल्क अग्रिम विनिर्णय प्राधिकरण

CUSTOMS AUTHORITY FOR ADVANCE RULINGS

नवीन सीमाशुल्क भवन, बेलार्ड इस्टेट, मुंबई - ४०० ००१

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The 21st of December 2021

Ruling No. CAAR/Mum/ARC/71-91/2021

In

Application No. CAAR/CUS/APPL/47-67/2021 -0/o Commr-CAAR-MUMBAI

- Name and address of the applicant : Endress + Hauser (India) Pvt. Ltd.,
7B, 7th floor, Godrej One, Pirojshanagar Nagar,
Vikhroli (East), Mumbai- 400079
- Commissioner concerned : The Commissioner of Customs (Preventive)(CPC),
55-17-3, C-14, 2nd Floor, Road No. 2,
Industrial Estate, Autonagar, Vijayawada
(Andhra Pradesh) – 520007
- Present for the application : Ms. Sonali Trivedi,
Shri Hemal Desai,
Shri Santosh Kumar,
Shri Satish Reddy.
- Present for the Department : Ms Sowmya Nuthalapati, Joint Commissioner,
O/o Commissioner of Customs (Preventive),
Vijaywada

Ruling

The present proceedings involve 21 applications for advance rulings filed by M/s. Endress+Hauser (India) Pvt. Ltd. These applications seek classifications of a group of products, which, according to the applicant, are measuring devices, namely flowmeters and level measurement instruments. The details of these applications are as under :-

Table 1

| Sr. No. | Application no. | Instrument model(s) | Measuring principle and type of instrument |
|---------|------------------------|--|--|
| 1 | CAAR/ CUS/APPL/47/2021 | Promag P100, P200, P300, P400, P10, 10P | Electromagnetic flowmeter |
| 2 | CAAR/ CUS/APPL/48/2021 | Promag H100, H200, H300, H500, H10, 10H | Electromagnetic flowmeter |



| | | | |
|----|------------------------|------------------------------------|---|
| 3 | CAAR/ CUS/APPL/49/2021 | Promag W300, W400, W500, W800, 10W | Electromagnetic flowmeter |
| 4 | CAAR/ CUS/APPL/50/2021 | Promag L 400 | Electromagnetic flowmeter |
| 5 | CAAR/ CUS/APPL/51/2021 | Promag S 55 | Electromagnetic flowmeter |
| 6 | CAAR/ CUS/APPL/52/2021 | Picomag | Electromagnetic flowmeter |
| 7 | CAAR/ CUS/APPL/53/2021 | Dosimag | Electromagnetic flowmeter |
| 8 | CAAR/ CUS/APPL/54/2021 | T Mass F300, F500 | Thermal mass flowmeter |
| 9 | CAAR/ CUS/APPL/55/2021 | T Mass I300, I500 | Thermal mass flowmeter |
| 10 | CAAR/ CUS/APPL/56/2021 | T Mass A150 | Thermal mass flowmeter |
| 11 | CAAR/ CUS/APPL/57/2021 | T Mass B150 | Thermal mass flowmeter |
| 12 | CAAR/ CUS/APPL/58/2021 | T Mass T150 | Thermal mass flowmeter |
| 13 | CAAR/ CUS/APPL/59/2021 | Prosonic G300, G500 | Ultrasonic flowmeter |
| 14 | CAAR/ CUS/APPL/60/2021 | Prosonic B200 | Ultrasonic flowmeter |
| 15 | CAAR/ CUS/APPL/61/2021 | Prosonic E100 | Ultrasonic flowmeter |
| 16 | CAAR/ CUS/APPL/62/2021 | Prosonic P500 | Ultrasonic flowmeter |
| 17 | CAAR/ CUS/APPL/63/2021 | Prowirl F200 | Vortex flowmeter |
| 18 | CAAR/ CUS/APPL/64/2021 | Prowirl D200 | Vortex flowmeter |
| 19 | CAAR/ CUS/APPL/65/2021 | Prowirl O200 | Vortex flowmeter |
| 20 | CAAR/ CUS/APPL/66/2021 | Prowirl R200 | Vortex flowmeter |
| 21 | CAAR/ CUS/APPL/67/2021 | Liquicap | Capacitance point levels measuring device |

2. E+H is a manufacturer/supplier of measurement instruments for measuring the flow, level, pressure, and temperature, as well as recording and digital communications across a wide range of industries. Further, they provide services for commissioning & erection, repairing services, calibration & configuration, inspection and commercial training and engineering services to various customers across the country. These applications can be grouped based on the operating principle employed, e.g., electromagnetic flowmeters (Sr. Nos. 1-7), thermal mass flowmeters (Sr. Nos. 8-12), ultrasonic flowmeters (Sr. Nos. 13-16), vortex flowmeters (Sr. Nos. 17-20) and capacitance point level instrument (Sr. No. 21). The details of the instruments and their characteristics, as stated in the application, are discussed below.

2.1. Electromagnetic flowmeters using Faraday's law of magnetic induction :-

These instruments are covered in the applications listed at Sr. Nos. 1 to 7 of Table 1 and are collectively referred to as electromagnetic flowmeters. They detect flow by using Faraday's Law of induction. The flowing medium is the moving conductor. Inside a flowmeter, the flow is measured using an electromagnetic coil that generates a magnetic field, and electrodes that capture electromotive force (voltage). As the flow changes, the electromotive force (voltage) captured by the electrodes change. This voltage is detected by sensors mounted in the flowmeter body and sent to a transmitter which calculates the volumetric flow rate based on the pipe dimensions. A flowmeter with a unique combination of transmitter and sensor is considered a distinctive instrument. For example, Promag P 400 is a unique combination where 'P' represents the sensor, and the number 400 represents the transmitter. There may be further



variations in P 400 based on the size (dimension) etc. These variations, it is stated, are not significant enough to impact the classification of the devices. In the Promag models, the sensor integrated into any instrument is denoted by an alphabet, namely, P, H, W, L and S.

| Sensor | P | H | W | L | S |
|---------------|---|---|----------------------|----------------------|---|
| Medium | Corrosive liquids and high medium temperature | Applications with hygienic requirements like food and beverages | Water and wastewater | Water and wastewater | Applications with high solids content and high abrasion |

The sensor employed in a particular instrument determines the type of liquid for which flowrate is to be measured. The transmitter is denoted by a number signifying its nature.

| Transmitter | 10 | 55 | 100 | 200 | 300 | 400 | 500 | 800 |
|------------------------------|---------------------|---------------------|----------------|--------------------|----------|---------------------|--------|----------------------|
| Nature of transmitter | integral and remote | integral and remote | blind integral | 2 wire-transmitter | integral | integral and remote | remote | integral battery mag |

Thus, the numerical difference denotes the placement of the transmitter (integral to the instrument or placed at a remote location; or 'blind' meaning that it has no visual display etc.). Models Picomag and Dosimag also operate on electromagnetic principle and are used for water flow measurement and batching and dosing applications respectively. The measured variables of these types of instruments include volume flow and electrical conductivity.

2.2. Thermal mass flowmeter using the thermal measuring principle based on the cooling of a heated resistance thermometer from which heat is extracted by the passing medium: -

These instruments are listed at Sr. Nos. 8 to 12 of Table 1 and are collectively referred to as thermal mass flowmeters. The thermal measuring principle is based on the cooling of a heated resistance thermometer from which heat is extracted by the passing medium. The medium passes two resistance thermometers in the measurement section. One of these is used in a conventional way as a temperature sensor, while the other serves as a heating element. The temperature sensor monitors and records the effective process temperature while the heated resistance thermometer is kept at a constant differential temperature (compared to the measured process temperature) by controlling the electrical current used by the heating element. The greater the mass flow passing over the heated resistance thermometer, the greater the extent to which cooling takes place, and therefore, stronger is the current required to maintain a constant differential temperature. This means that the heat current measured is an indicator of the mass flow rate of the medium. These instruments are characterized by a high operable flow range and direct mass flow measurement, and measure utility and process gases as well as gas mixtures in small line sizes. In the T mass models of thermal flowmeter, the sensor integrated into any instrument is denoted by an alphabet, namely, F, I, A, B, and T.



| | | | | | |
|---------------|---------------------------|---------------------------|-------|---------------|-------|
| Sensor | F | I | A | B | T |
| Medium | Utility and process gases | Utility and process gases | Gases | Utility gases | Gases |

The thermal mass flowmeters are used to measure flowrate of utility and process gases as well as gas mixture in circular piping or rectangular duct. The transmitter is denoted by a number, namely, 300, 500 and 150.

| | | | |
|------------------------------|----------|--------|--------|
| Transmitter | 300 | 500 | 150 |
| Nature of transmitter | integral | remote | remote |

Thus, the transmitter and sensor can either form a mechanical unit or be mounted in physically separate locations. The measured variables of these types of instruments include mass flow and temperature.

2.3. Ultrasonic flowmeters using the sound waves to determine the flow velocity: -

These instruments are listed at Sr. Nos. 13 to 16 of Table 1. These devices measure flow velocity, medium temperature, volume flow, mass flow, etc. of liquids. Ultrasonic flowmeters use sound waves to determine the velocity of a fluid flowing in a pipe. The measuring system uses a measurement method based on the transit time difference. In this measurement method, acoustic signals (ultrasonic) are transmitted between two sensors. Signal transmission is bidirectional, i.e., the sensor operates as both a sound transmitter and a sound receiver. At no flow conditions, the frequencies of an ultrasonic wave transmitted into a pipe and its reflections from the fluid are the same. Under flowing conditions, the frequency of the reflected wave is different due to the Doppler Effect. When the fluid moves faster, the frequency shift increases linearly. The transmitter processes signal from the transmitted wave and its reflections to determine the flow rate. In the Prosonic models of ultrasonic flowmeters, the sensor integrated into any instrument is denoted by an alphabet, namely, G, B, E and P.

| | | | | |
|---------------|-------------------------|------------|-------|----------------|
| Sensor | G | B | E | P |
| Medium | Natural and process gas | Wet biogas | Water | Various fluids |

The ultrasonic flowmeters are used to measure flowrate of liquids and gases. The transmitter is denoted by a number, namely, 100, 200 300 and 500.

| | | | | |
|------------------------------|----------|----------|----------|--------|
| Transmitter | 100 | 200 | 300 | 500 |
| Nature of transmitter | integral | integral | integral | remote |

Thus, the transmitter and sensor can either form a mechanical unit or be mounted in physically separate locations. The measured variables of these types of instruments include volume flow, the velocity of the flow and sound velocity.

2.4. Vortex flowmeters working on the principle of the Karman vortex street: -

These instruments listed at Sr. Nos. 17 to 20 of Table 1 and measure the flow of liquids. Vortex meters work on the principle of the Karman vortex street. When fluid flows past a bluff body, vortices are alternately formed on both sides with opposite directions of rotation. These vortices each generate a local low pressure. The pressure fluctuations are recorded by the sensor and converted to electrical pulses. The vortices develop very regularly within the permitted



application limits of the device. Therefore, the frequency of vortex shedding is proportional to the volume flow. Vortex flowmeters are used in numerous branches of industry to measure the volume flow of liquids, gases and steam. Modern vortex meters such as the multivariable Prowirl 200 are built to measure volume flow but are also equipped with temperature sensors and flow computers. In the Prowirl models of vortex flowmeters, the sensor integrated into any instrument is denoted by an alphabet, namely, F, D, O and R.

| Sensor | F | D | O | R |
|--------|-------|--------------------------|---|--|
| Medium | Steam | Steam, gases and liquids | High pressure Steam, gases and liquids | Steam, gases and liquids with low flow |

The vortex flowmeters are used to measure flowrate of liquids and gases. The transmitter is denoted by number the 200 which can be used as both the integral and remote unit. The measured variables of these types of instruments include volume flow and temperature.

2.5. Capacitance point level measurement instrument utilising the principle of change in capacitance of the capacitor due to the change in the level: -

This instrument is listed at Sr. No. 21 of Table 1. The principle of measurement is based on the change of capacitance of a capacitor. The probe and the tank wall form a capacitor whose capacitance is dependent on the quantity in the tank. An empty tank has a lower capacitance, whereas a filled tank has a higher capacitance. The liquicap level instruments are used for point level detection, interface detection of different liquids (e.g., oil on water), foam detection of conductive liquids etc. They are capable of reliable operation even in strong build-up formation and viscous media. The measured variable of this device includes continuous measurement of change in capacitance between probe rod and container wall or ground tube, depending on the level of a liquid.

2.6. The devices discussed above are also equipped with software such as HART PROFIBUS PA/DP, Foundation Fieldbus and others. These are communication protocol, standard and system. These protocols are designed to connect field instruments to control and monitor host systems, typically a distributed control system.

2.7. It is stated that the devices on which advance rulings are sought only measure parameters (like flow rate and level) and make available the measured value in the required signal format for information/further processing, as per the requirement of the end customer. For safe & reliable working, the measured raw signals are converted into an analogue or digital signal which is the basis for any display. It is stated that these goods do not have the capacity to independently control or regulate the flow of liquids or gases. The description of the goods, their principal function, and the suggested appropriate classification have been provided in appendices along with the weblinks to the catalogue for each product for the goods covered in these applications. The main purpose for which these instruments are purchased by the applicant's customers is to measure the process variable which help them to manage their operations efficiently and in a safe manner. It is emphasised that these devices are designed to



be measuring instruments, they are marketed and sold as measuring instruments and used by the customers as measuring instruments.

2.8. The applicant has informed that they had, in past, imported certain measuring instruments and had filed Bills of Entry Nos. 7041231, dated 02.07.2018 and 7880188, dated 01.09.2018 claiming the classification under heading 90.26 and the benefit of Notification No. 24/2005-Customs, dated 01.03.2005 (S1. No. 31). The items covered in the said bills of entry were: -

1. Promass P1008P1B15, DN15 1/2" 8P1B15-1RT4/0 Coriolis flowmeter
2. Promass P 100 8P1B08, DNO8 3/8" 8P1B08-1MM1/0 Coriolis flowmeter
3. Promass F 300 8F3B80, DN80 3" 8F3B80-8QV7/0 Coriolis flowmeter
4. Promass 84F08, DN8 3/8" 84F08-2196/0 Coriolis flowmeter
5. Cerabar PMC 11 (pressure transducer)
6. Cerabar
7. Micropilot FMR20 (liquid level measuring instruments)
8. Liquiphant M FTL51H (liquid level measuring instruments)
9. Ceraphant PTP33B (pressure switch).

During the course of assessment, the original authority had rejected the classification claimed and classified the items under tariff entry 90328990 and consequently denied the exemption. The applicant filed an appeal with the jurisdictional Commissioner of Customs (Appeals) against the said assessment. In the Order-in-Appeal dated 28.06.2019, the Commissioner (Appeals) had observed that the imported parts and accessories might have been used in manufacturing either the measuring device or the controlling device, but since the final product is a regulating or controlling device, its parts shall also be classifiable under heading 9032 and consequently the benefit of Notification No. 24/2005-Customs, 01.03.2005 would not be admissible to the appellant. The applicant has filed an appeal against the said OIA which, at present, is pending before the CESTAT. The applicant has reiterated that the items for which advance rulings are being sought are not covered in the pending appeal. It is argued that the well-established position of law is that classification of each good has to be decided on its merit, considering its function, characteristics and the wording of the tariff headings and the related chapter and section notes. In its findings, the Order-in-Appeal refers to 'the goods under reference'. Thus, the OIA applies specifically and only to the goods discussed in the OIA.

3. Since, the applicant has expressed their desire to import the subject goods through the Sri city SEZ, the applications were forwarded to the Commissioner of Customs (Preventive), Vijayawada. The comments/report received are summarised as under: -

- i. All the goods imported are flowmeters of different models with minor technical variations. The products are having sensors, microprocessors, transmitters, amplifiers, relays etc., along with inbuilt software known as HART PROFIBUS PA/DP, Foundation Fieldbus and others which makes the resultant product suitable for two-way communication and process control. The goods proposed to be imported by the importer are devices suitable for use principally with industrial automatic process control equipment and pertain to industrial



instrumentation and forms part of the automatic process control apparatus system. In an automatic process control apparatus system, the process variables like flow, pressure, level etc., are controlled by measuring them continuously. Automation includes measuring, monitoring and controlling, and instruments used in the automation system are parts of an automatic controlling or regulating system. These instruments function only in integration with the automation system. The flowmeters proposed to be imported by the importer, though separate from a control/operating device, are integral components intended to contribute to a clearly defined function of process control. With the new technology, flowmeters have become an integral part of control systems. Further, in the website of the importer it is mentioned that the products are not merely measuring instruments but are field instruments required to measure and control different automation processes. As per note 3 to read with note 2(b) to Chapter 90, the measuring devices, being parts and accessories of controlling apparatus have to be classified under tariff entry 90329000. Therefore, the imported devices should be seen as parts of the main machine/combined machine for performance of a common function, i.e., "flow control", and not to be seen in isolation.

- ii. Similar observations have been made by the Commissioner (Appeals), Mumbai in the OIA No.MUM-CUSTM-AMP-APP-255&256/19-20 dated 28.06.2019 in case of M/s Endress & Hauser India Pvt. Ltd, Mumbai, involving classification of "Micro pilot NMR 81 (Model No. NMR81). It is opined that the ratio of the issue as decided by the said OIA applies to the applications under consideration. It is also suggested seeking comments from the concerned Mumbai Commissionerate.
- iii. Presently the applicant has gone into appeal before Hon'ble CESTAT, Mumbai against order OIA No.MUM-CUSTM-AMP-APP-255&256/19-20. As the appeal is pending before Hon'ble CESTAT, the application is not fit for advance ruling in terms of Section 28I (1) & (2) of the Customs Act, 1962.
- iv. Reference has also been made to the order passed by the Commissioner (Appeals), Mumbai OIA NO. MUM-CUSTM-AMP-APP-879 /17-18 dated 14.12.2017 goods in respect M/s Emerson Process Management (India) Pvt. Ltd., Mumbai, involving classification of similar flowmeters. Further, the show cause notice and order in original passed by Assistant Commissioner of Goods and Service Tax (GST), Aurangabad Rural Division is also submitted in support.
- v. In respect of the report issued by FCRI dated 01.10.2014, it has been pointed out that it is not known whether the report pertains to the same goods with the same specifications and technology that are intended to be imported. It is also stated that the report is old and is not issued by a central authorised control laboratory like the CRCL.
- vi. The case of CC Bangalore Vs. N.I. Systems (India) Pvt. Ltd. 2010(256) ELT 173 (S.C.) is cited, in which the Hon'ble Supreme Court observed that a control system generally refers to the control by a device of the process system by monitoring one or more of its parameters over a period of time. Controllers are generally connected to other computing apparatuses. The principal function of controllers is to execute control. Therefore, the goods cannot be considered as mere flowmeters but in fact are control and regulating system/apparatus, classifiable under heading 9032.



vii. The applicant had initially imported the goods from Mumbai customs, by rightly classifying them under heading 9032 and upon payment of applicable duties. But the applicant intends to import the said goods, subsequently, from a logistically far off place, i.e., SEZ, Sri city, Andhra Pradesh, under a different heading, i.e., 9026, which evidences the malafide intentions of the applicant to evade payment of applicable duties.

In view of the above, it is stated that the impugned goods are rightly classifiable under heading 9032, and not under 9026, and hence, no exemption benefits are available to the importer as such.

4. The comments from the Vijayawada Commissionerate have been shared with the applicant and the applicant has filed their rejoinder on 02.11.2021. The reply in response to comments from the jurisdictional commissionerate has been summarised below: -

i. The sensing element in the instruments generates an electrical phenomenon that is directly proportional to the parameter under measurement. The electrical phenomenon is taken to a transmitter which stabilizes the phenomenon to give an output, which is representative of the measured process variable. The output may then be used for giving input to an independent process control system or process controller which usually compares the signal received with desired measurements and sends a control command or signal. The instruments may have facilities for providing a digital output to just ensure that the end-user can integrate the measuring instruments with other controlling apparatus (which are not supplied by them), as per their needs. All sensors today are equipped with electronics including a microprocessor for processing of physical signals; however, this does not imply that the instruments have inherent automatic control or regulating functions. The devices also have a local LCD for showing the process variable being measured. Profibus, Hart & Fieldbus are industry network protocols for the purpose of configuring devices (e.g., selection of language, unit of measurement etc.) for the given application and reading the measurements. The impugned devices are capable of functioning independently for measurement. The manner of usage of the measurement information is the choice of the user. In response to the extract cited by the commissionerate alleging controlling function, the applicant stated that it is general information about the global portfolio of the company. The specific information for each instrument is in the product catalogues which they have shared with the application. The instruments do not contain a controlling device, nor a starting, stopping or operating device, which is required for goods falling under heading 90.32, as per HSN Explanatory Notes. They are also not manufactured or imported as parts of automatic controlling or regulating instruments. As per note 2 (a) to Chapter 90, if a good is included specifically in any heading of Chapter 90, it will stand classified under that respective heading in all cases. In the subject case, the measuring instruments, are specifically classified under heading 9026. Note 2 (b) to Chapter 90 is not relevant. It is a settled legal position that the goods have to be assessed to duty in the condition in which they are imported, and as per the intended function. Post-importation considerations should not influence the classification of imported goods.



- ii. In respect of the order in appeal dated 28.06.2019, the applicant states that it does not cover the products included in this application. Therefore, this order is not relevant to the current application. As the applicant has indicated Sri city port as the port of import in the CAAR-1 application, the authority is not required to seek comments from Mumbai customs.
- iii. In reply to the comment that the expert opinions are not from CRCL and are old, the applicant states that the expert opinions were obtained for the purpose of assessing functionalities of instruments and the date of the reports does not influence their validity. It is pointed out that the department has not referred the matter to CRCL.
- iv. In respect of the issue of classification, the goods covered in these applications are not pending in before the appellate tribunal or any court. Nor is the specific matter already decided by the appellate tribunal or any court. The appeals pending in Mumbai jurisdiction in respect of some other goods (not covered in these applications) cannot impact the present applications.
- v. The applicant states that M/s Endress + Hauser Flowtec (I) Pvt. Ltd. is a distinct corporate entity, with its PAN, IEC, GST and such other registrations. Hence, it is not relevant to the present application.
- vi. In respect of an allegation of malafide intentions, the applicant states that the decision to import at Sri city SEZ was taken considering efficient logistics & commercial operations for the current and future business transactions and available infrastructure. They presented all facts to the department on their own and sought rulings to bring predictability to their operations and that the unsubstantiated allegation are not called for.

5. These applications were heard on 26.10.2021, 27.10.21 and 30.11.21. S/Shri Hemal Desai, Santosh Kumar, Satish Reddy and Ms Sonali Trivedi appeared on behalf of the applicant. Ms Sowmya Nuthalapati, Joint Commissioner, Commissioner of Customs (Preventive), Vijaywada appeared on behalf of the jurisdictional commissionerate.

5.1. In all the 21 applications involving flow measuring devices operating under 5 different scientific principles, the applicant has stated that duty has been paid under protest. Therefore, the applicant was asked to clarify the nature of their protest and provide full facts in respect of the status of such assessments. In reply to this, the applicant informed that they have already written to ACC, Mumbai informing that they do not intend to pursue the subject matter of past import. They have submitted the letter dated 11.11.21 issued to the Assistant Commissioner, ACC, Mumbai for reference. Also available on record is the letter F.No. S/3-Misc-55/2021-22/Gr-V B/ACC (I), dated 30.11.2021 of the Additional Commissioner of Customs, Import, ACC, Mumbai stating that no order was passed in respect of the B/E No. 2331497, dated 03.07.2017 where duty was paid under protest and that as per available records, no proceedings are pending against M/s Endress + Hauser in this case.

5.2. The applicant has explained the operational principles of magnetic flowmeters which according to them are used in liquids. In respect of thermal flowmeters, they have stated that it measures the flow rate itself and not volume like magnetic flowmeter which is used for



air/gases. They have also explained the operating principles of ultrasonic, vortex and liquicap flowmeters.

5.3. On the issue of commissionerate's comments that these devices contain sensors, microprocessors, etc., they have said that all modern devices would necessarily incorporate such elements. On the issue of the existence of Hart, Profibus PA/DP in their devices, they explained that these are nothing but digital output of the devices. They further stated that modern devices are complex instruments and the existence of sensors/ micro-processors/ software, etc., is necessary and is sine qua none as such devices are used in hazardous places or due to hygiene reasons.

5.4. The applicant drew my attention to note 2 to Chapter 90 to counter the commissionerate's claim that the devices they intend to import could be parts of automatic controlling and regulating devices.

6. Before proceeding on the merits, in view of the comments from the jurisdictional commissionerate, it is necessary to establish the admissibility of these applications first. According to Section 28-1(2) of the Customs Act, 1962, the authority shall not allow the application where the question raised in the application is either already pending in the applicant's case before any officer of customs, the appellate tribunal or any court; or has already been decided by the appellate tribunal or any court. It is true that there is an appeal of the applicant pending before the CESTAT. The pending appeal is in respect of products that are not involved in any of the 21 applications involved in the present proceedings. The term "advance ruling" is defined in the Act as a written decision on any of the questions referred to in Section 28H raised by the applicant in his application in respect of any goods before their importation or exportation. The Technical Guidelines on Advance Rulings for Classification, Origin and Valuation, published by the World Customs Organisation, in its Clause 7, says that 'An application for advance ruling on classification, origin or valuation shall be made in writing to a competent authority and relate to only one good (emphasis supplied). From a reading of the law as it stands and the WCO's mandate, it would appear that if advance ruling applications are to be rejected only on the ground that a similar product is involved in a dispute, the entire purpose of seeking advance rulings would be defeated. It has to be kept in mind that the process of advance rulings is not a dispute settlement mechanism, but is purely a facilitative nature and seek to enhance ease of cross border trade by indicating entry tax liabilities before import or export. In such circumstances, if the present applications are rejected only because an appeal is pending in respect of similar products, in my considered opinion, that would be a travesty. Therefore, I have decided to proceed with the present proceedings and render rulings on merits.

7. I have considered all the materials placed before me and have also verified the weblinks provided by the applicant to the specific products. The items for which advance rulings have been sought, their characteristics, specifications etc. are already mentioned in paragraphs 2 to 2.7 of this ruling. To summarise, the items under consideration are stated to be measuring instruments consisting of 20 applications of flowmeters and one application of a level



measuring device. Flowmeters are devices that measure/check the mass flow of liquids and gases, along with other parameters such as temperature, specific gravity etc. The level measuring instrument is used for point level/interface detection of different liquids. The product catalogues submitted with these applications are also in agreement with the averments of the applicant. The applicant has explained the basis of groupings of the instruments/devices as common sensor and each group of products are intended for different applications/industries. For example, the Promag P group of products are for chemical/petrochemical industries while Promag H are for personal care/F&B industries where demand for hygienic applications is high. Two expert opinions, from Fluid Control Research Institute, Palakkad, Kerala; and Institute of Chemical Technology, Mumbai is also confirming the applicant's stand in respect of the instruments manufactured by their Aurangabad plant. In this case, I am confronted with two different possible headings for classification of the impugned devices/instruments, i.e.,

90.26: 'INSTRUMENTS AND APPARATUS FOR MEASURING OR CHECKING THE FLOW, LEVEL, PRESSURE OR OTHER VARIABLES OF LIQUIDS OR GASES (FOR EXAMPLE, FLOWMETERS, LEVEL GAUGES, MANOMETERS, HEAT METERS), EXCLUDING INSTRUMENTS AND APPARATUS OF heading 9014, 9015, 9028 OR 9032' or

90.32: 'AUTOMATIC REGULATING OR CONTROLLING INSTRUMENTS AND APPARATUS'.

8. From the product catalogues, it appears that these flowmeters measure the mass flow of liquids and gases, along with other parameters such as temperature. The flowmeters appear to be capable of only measuring the value and the measured parameter(s) are displayed visually or provided as a digital output. Hence, these instruments appear to match the description for goods covered under heading 90.26, as instruments and apparatus for measuring or checking the flow, level, pressure or other variables of liquids or gases. I find that heading 90.26 specifically mentions flowmeters. The HSN Explanatory Notes for heading 90.26 states, "This heading covers instruments and apparatus for measuring or checking the flow, level, pressure, kinetic energy or other process variables of liquids or gases. The instruments and apparatus of this heading may be fitted with recording, signalling or optical scale-reading devices or transmitters with an electrical, pneumatic or hydraulic output. Measuring or checking apparatus generally incorporates an element sensitive to variations in the quantity to be measured (e.g., Bourdon tube, diaphragm, bellows, semiconductors) moving a needle or a pointer. In some devices, the variations are converted into electrical signals. Measuring or checking instruments or apparatus of this heading combined with taps, valves, etc., are to be classified as indicated in the Explanatory Note to heading 84.81. "APPARATUS FOR MEASURING OR CHECKING THE FLOW OR RATE OF FLOW OF LIQUIDS OR GASES".

8.1. In respect of apparatus for measuring or checking the flow or rate of flow of liquids or gases the HSN explanatory notes Chapter 90.26 further states that the flowmeters indicate the rate of flow (in volume or weight per unit of time) and are used for the measurement of flow



both through open channels (rivers, waterways, etc.) and through closed conduits (piping, etc.). Some flowmeters use the principle of the fluid meters of Heading 90.28 (turbine-type, piston type, etc.) but the majority are based on the principle of differential pressure. These include -

- Differential Pressure (fixed aperture) flowmeters
- Variable area (variable aperture) flowmeters
- Flowmeters which operate by using magnetic fields, ultrasound or heat.

This heading excludes: -

- Hydrometric paddle-wheels for measuring the rate of flow in rivers, canals, etc., which fall in heading 90.15 as hydrological instruments;
- Apparatus which merely indicate the total amount of liquid delivered over a period, which is classified as supply meters in heading 90.28."

Thus, the HSN Explanatory Notes to heading 90.26 states that apart from specific exclusions as mentioned, heading 90.26 covers instruments and apparatus for measuring the flow, level, pressure, kinetic energy or other process variables of liquids or gases. From the product description, it is evident that the flowmeters under consideration indicate the rate of flow. They are fitted with a sensor that is sensitive to the variations in the quantity to be measured. These variations are converted into electrical signals. They incorporate transmitters for the communication purpose of the output variables. The HSN explanatory notes specifically include flowmeters working on the principles of magnetic field (applications at Sr. Nos. 1-7), ultrasound (applications at Sr. Nos. 13-16), heat (applications at Sr. Nos. 8-12) and differential pressure (applications at Sr. Nos. 17-20). These flowmeters do not fall under the exclusion criteria specified in explanatory notes.

8.2. In respect of instruments for measuring or checking the level of liquid or gases, the HSN explanatory states that level indicator includes inter alia, electrical type based, for example, on the variations of resistance, capacitance, ultrasound, etc. This heading covers not only level indicators for closed reservoirs or tanks, but also those for open basins and canals (hydroelectric works, irrigation systems, etc.). Instruments for measuring or checking the level of solid materials are excluded (heading 90.22 or 90.31, as the case may be). From the product description, it is evident that the liquicap (application at Sr. No. 21) is used to measure the level of liquid using variations of capacitance. A transmitter is also fitted for communication purposes. Further, this level instrument does not fall under the exclusion criteria specified in explanatory notes.

Considering the above it appears that the impugned goods are classifiable under heading 90.26 of the Customs Tariff Act, 1975. the flowmeters are classifiable under subheading 90261010 and the level measuring instrument is classifiable under subheading 90261020.

9. As per Chapter note 7 to Chapter 90, heading 9032 applies only to:
- (a) instruments and apparatus for automatically controlling the flow, level, pressure or other variables of liquids or gases, or for automatically controlling temperature, whether or not their operation depends on an electrical phenomenon which varies according to the factor to be automatically controlled, which are designed



to bring this factor to, and maintain it at, the desired value, stabilized against disturbances, by constantly or periodically measuring its actual value; and

(b) automatic regulators of electrical quantities, and instruments or apparatus for automatically controlling non-electrical quantities the operation of which depends on an electrical phenomenon varying according to the factor to be controlled, which are designed to bring this factor to, and maintain it at, the desired value, stabilized against disturbances, by constantly or periodically measuring its actual value.

9.1. Elaborating on the instruments and apparatus for automatically controlling the flow, level, pressure or other variables of liquids or gases, the HSN explanatory notes state that the apparatus shall essentially consist of:

(A) A device for measuring the variable to be controlled (pressure or level in a tank, the temperature in a room, etc.); in some cases, a simple device which is sensitive to changes in the variable (metal or bi-metal rod, chamber or bellows containing an expanding liquid, float, etc.) may be used instead of a measuring device.

(B) A control device that compares the measured value with the desired value and actuates the device described in (C) below accordingly.

(C) A starting, stopping or operating device.

Further, it states that apparatus for automatically controlling liquids or gases or temperature, within the meaning of note 7 (a) to this Chapter, consists of these three devices forming a single entity or in accordance with note 3 to this Chapter, a functional unit. Some instruments and apparatus do not incorporate devices that compare the measured value with the desired value. They are directly activated by means of a switch, e.g., when the predetermined value is reached. Instruments and apparatus for automatically controlling the flow, level, pressure and other variables of liquids or gases or for automatically controlling temperature are connected to an appliance that carries out the orders (pump, compressor, valve, furnace burner, etc.) which restores the variable (e.g., liquid measured in a tank or temperature measured in a room) to the prescribed value, or which, in the case of a safety system, for instance, stops the operation of the machine or apparatus controlled. This appliance, generally remote-controlled by a mechanical, hydraulic, pneumatic or electric, is to be classified in its own appropriate heading (pump or compressor: heading 84.13 or 84.14; valve: heading 84.81, etc.). If the automatic control apparatus is combined with the appliance which carries out the orders, the classification of the whole is to be determined under either Interpretative Rule 1 or Interpretative Rule 3 (b) (see Part (III) of the General Explanatory Note to Section XVI and the Explanatory Note to heading 84.81).

9.2. The flowmeters under consideration appear to only measure the flow rate and make available the measured value in the required signal format for further processing/information, based on the requirement of the end customer. There is nothing on record, or available in the product catalogues to indicate that these devices/instruments have the capacity to perform additional functions of automatically controlling or regulating the flow of liquids. In the context of explanatory notes, these devices lack 2 essential components, viz, a control device and a starting/stopping/operating device. Therefore, it appears that the goods under consideration do



not fulfil the criteria laid down in explanatory notes and are consequently not classifiable under heading 9032.

10. Rule 1 of the GI Rules lays down that the titles of sections, chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. Considering the nature of the devices/instruments involved in this proceeding, heading 90.26 is a more appropriate classification. Rule 3 of the GIR states that "the heading which provides the most specific description shall be preferred to headings providing a more general description". The classification of the flowmeters under heading 90.26 complies with the mandate of both the above-mentioned General Rules.

10.1. The jurisdictional commissionerate in their comments has submitted that these goods incorporate sensors, transmitters, microprocessors etc., along with software such as HART PROFIBUS PA/DP, Foundation Fieldbus and others which makes the resultant product suitable for two-way communication and process control. The goods proposed to be imported by the importer are devices suitable for use principally with industrial automatic process control equipment and pertain to industrial instrumentation and forms part of the automatic process control apparatus system. However, as discussed in para 9.2 there is nothing on record that indicates these instruments incorporate devices for controlling or operating the machines. Therefore, these softwares give the ability to the impugned goods to communicate with control devices for process control. However, lack of control or operating devices in the products under consideration renders them as measuring devices only, and not automatic process control apparatus.

10.2. I also find merit in the applicant's contention that classification has to be based on the form of goods at the time of their clearance and it is a settled legal position that the goods have to be assessed to duty in the condition in which they are imported. The decision of the Hon'ble Supreme Court in the case of Dunlop India Vs. UOI - 1983 (13) ELT 1566 (SC), cited by the applicant, states that 'the condition of the article at the time of importing is a material factor, for the purpose of classification as to under what head, duty will be leviable'. In the present case, what are proposed to be imported and cleared are measuring instruments used in measuring the flow of liquids or gases or measuring the level of liquid. Therefore, the goods are required to be classified as only flowmeters or level indicators, which per se, are not capable of performing any controlling function. The applicant's global company, according to information available in the public domain, is a market leader in the field of manufacturing measuring instruments. The product positioning of these goods is as measuring instruments only. There is no material before me to reject the applicant's contention that these devices are individually marketable and, in many cases, operate without any control system at the customers' end and that they can be used as stand-alone instruments for measurements in some industries (water management and sugar industries) where only measurement is involved for monitoring with no interface with any other system. These instruments do not and cannot



control the flow of the liquid/gas. The export invoice from the parent company in Germany also shows that the classification adopted was heading 9026.

10.3. The principal function of the measuring instrument is to measure the process parameter of liquid or gases. It is possible the output from these devices may then be used for giving input to an independent process control system or process controller which compares the signal received with desired measurements and sends a control command or signal. The devices may have facilities for providing a digital output to just ensure that the end-user can integrate the measuring instruments with other controlling apparatus to suit their needs. However, it is necessary to make a distinction between the measuring instrument and the control system, which acts on the measured variable. Automatic regulating or controlling instruments are designed to bring a factor, such as flow to, and maintain it, at the desired value, by constantly or periodically measuring its actual value. The products covered in the present applications are measuring instruments only. They are not part of control systems and are distinct from the control systems. They are operable as standalone devices classifiable under heading 90.26 as simple measuring devices. They cannot be treated as parts of control devices and can operate without any control system at the customers' end.

10.4. The jurisdictional commissionerate has submitted that as per Chapter note 3 read with note 2(b) to Chapter 90, the measuring devices, being parts and accessories of controlling apparatus have to be classified under heading 90329000.

Note 2(b) to Chapter 90 states that *parts and accessories, if suitable for use solely or principally with a particular kind of machine, instrument or apparatus, or with a number of machines, instruments or apparatus of the same heading (including a machine, instrument or apparatus of heading 9010, 9013 or 9031) are to be classified with the machines, instruments or apparatus of that kind.*

Note 3 to Chapter 90 states that notes 3 and 4 to Section XVI apply also to this Chapter. These notes are reproduced below:

3. Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine, which performs the principal function.

4. Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or Chapter 85, then the whole falls to be classified in the heading appropriate to that function.

HSN explanatory rules to Chapter 90 were referred to. It states that subject to Chapter note 1, parts or accessories identifiable as suitable for use solely or principally with the machines, appliances, instruments or apparatus of this Chapter are classified with those machines, appliances, etc. However, this general rule does not apply to parts or accessories



which in themselves constitute articles falling in any particular heading of this Chapter or of Chapter 84, 85 or 91 (other than the residual heading 84.85, 85.48 or 90.33. As discussed above, these devices themselves constitute articles falling under heading 90.26. Therefore, note 2(b) is not applicable owing to the explanation given in note 2(a) to Chapter 90. In respect of Chapter note 3 to Chapter 90, it is to be noted that at the time of clearance the impugned goods are not a composite machine or a machine involving individual components to be classified under heading 90.32. As discussed earlier, these devices lack essential other parts for them to be classified under heading 90.32 at the time of import. The principal function as well as the clearly defined function of the goods to be imported is to measure the process variables of liquid or gases. Therefore, correctly classifiable under heading 90.26.


10.5. Before coming to this conclusion, I have carefully considered the findings of the Id. Commissioner (Appeals) who dealt with the import of similar measuring instruments. It appears that Id. Commissioner (Appeals) has come to the conclusion that the final product manufactured by the appellant is not merely a measuring instrument and it is in fact a part of the automatic regulating or controlling apparatus under heading 90.32. The appellate order also considers the catalogue submitted by the appellant of products and came to the conclusion that these devices contain sensors, microprocessors, transmitters, amplifiers, relays etc. along with software and that such devices also have inbuilt software known as HART PROFIBUS PA/DP, Foundation Fieldbus and others which makes the resultant product suitable for two-way communication and process control. A conclusion has also been drawn that these devices have time-saving local operation systems without additional software and hardware and also have integrated web servers, and therefore, can convert analogue signals into digital or electrical signals which are amplified further to desired strength and then are transmitted to process controller. Therefore, it has been held that the final equipment is suggested to have a facility of the configuration of parameters to be controlled and the parts and accessories imported by the appellant are to be used for sophisticated functional units which directly participate in process control. On the basis of the above understanding, the Id. Commissioner (Appeals) has upheld the classification of Liquiphant and other flowmeters and has also denied the benefit of exemption. However, I am unable to agree with the conclusions of the Id. Commissioner (Appeals) in holding that the imported goods were parts and accessories for the manufacture of automated process control systems. As I have already observed earlier in this ruling, classification has to be decided on the basis of the state of goods at the time of import and any subsequent activity shouldn't influence the classification decision. This also is the view of the Hon'ble Supreme Court in the case of M/s. Sony India reported at 2008 (231) E.L.T. 385 (S.C.) apart from the ruling in the case of M/s Dunlop India vs UOI — 1983 (13) ELT 1566 (SC) cited by the applicant. Therefore, I am unable to agree with the conclusions of the Id. Commissioner (Appeals) and hold that even though it is possible that some of the flowmeters proposed to be imported by the applicant can be used in a system to control and regulate process parameters, these flowmeters, by themselves, are not automatic controlling and regulating apparatuses.

11. In view of my aforesaid discussions, I rule that the instruments/devices under consideration merit classification under heading 90.26 and more specifically, devices listed at



Sr. No. 1 to 20 of Table 1 under subheading 90261010 of the first schedule to the Customs Tariff Act, 1975 and devices at Sr. No. 21 of the said table under subheading 90261020 of the first schedule to the said act.

12. Before concluding, I wish to make an observation regarding the jurisdictional commissionerate's comments regarding malafide intentions on part of the applicant. Advance ruling is the determination of a question of law or fact regarding the duty liability of the applicant on proposed activity to be undertaken by the applicant. World Customs Organisation and World Trade Organisation recognise advance rulings as an essential mechanism to reduce conflicts and disputes in international trade. The provisions for advance rulings have been incorporated in Customs Act, 1962 to promote certainty and predictability in taxation. It is one of the Government of India's trade facilitation measures to promote ease of doing business. In this context, applications for advance rulings to determine tax treatment needs to be welcomed. In the present case, the applicant has disclosed all relevant facts in the applications, which were also shared with the jurisdictional commissionerate. The unsubstantiated allegations of the commissionerate against the applicant in this proceeding are therefore unwarranted and go against the spirit of advance rulings.


21/12/2021

(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 :-

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✓ Guard file.




 (Manoj Kumar Hessa)
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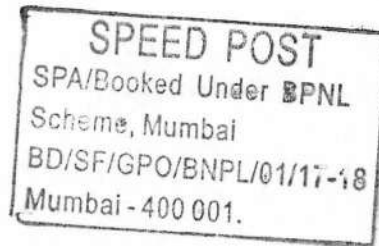


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Dated: 23.12.2021

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| 5. | The Member(Customs), Central Boards of Indirect Taxes & Customs, North Block, New Delhi-110001 | EM7198499631N |

Receivers Signature



Senders Signature

कुपाल सिंह कटोच
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