सीमाशुल्क अग्रिम विनिर्णय प्राधिकरण
CUSTOMS AUTHORITY FOR ADVANCE RULINGS
नवीन सीमाशुल्क भवन, बेलार्ड इस्टेट, मुंबई - ४०० ००१
NEW CUSTOM HOUSE, BALLARD ESTATE, MUMBAI - 400 001
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The 19th of January,2022
Ruling Nos. CAAR/Mum/ARC/02/2022
in
Application No. CAAR/CUS/APPL/74/2021 - 0/o Commr-CAAR-MUMBAI

Name and address of the applicant:	M/s Smartage Projects Pvt Ltd, Regd Office 303, Star Hub, Bldg. No.1, off International Airport Road,Andheri (East), Mumbai-400099
Commissioner concerned:	The Principal Commissioner of Customs (Preventive)(CPC), 55-17-3, C-14, 2nd Road, Industrial Estate, Auto Nagar, Vijayawada (AP) – 520007
Present for the applicant:	Shri Aranyak Sen Shri Nishchal Shri Santosh Reddy
Present for the Department:	Shri Vijaykumar Kavilikatta (Deputy Commissioner, CPC Vijaywada);

Ruling

M/s Smartage Projects Pvt. Ltd (hereinafter referred to as the applicant) have their address at Unit 303, Star Hub, Building No1, Near International Airport, Landmark ITC Maratha, Andheri East - 400099, Mumbai — Maharashtra (hereinafter referred to as SPPL). Their IEC code is 0307028399.

2. The applicant intends to import I-MAS POs, which is Nickel Hydroxide compound (containing 78% to 80% of Nickel Hydroxide, 2 to 2.5% of Cobalt Hydroxide & balance Graphite) and want to classify the subject goods under the tariff Entry 28254000.

3. The applicant has made the following submissions:

a) the proposed goods for import viz. NICKEL HYDROXIDE (Ni(OH)2) is the main raw material used to make positive electrode plates used in NICKEL CADMIUM batteries. Nickel-Cadmium batteries are made from two electrodes (Nickel and Cadmium

Hydroxide) immersed in a potash solution. The positive electrode consists of Nickel Hydroxide, while the negative one is made from Cadmium. The electrolyte is generally based on Potash.

b) The NICKEL HYDROXIDE compound is majorly NICKEL HYDROXIDE (70-85%) in the compound with a small portion of co-precipitated Cobalt Hydroxide - Co(OH)2 (1-5%), and balance contains Graphite (12-18%) along with moisture (2-8%) for density and free flow ability.

c) The process followed to make Nickel Hydroxide is as follows :-
Nickel Sulphate solution and small quantity of Cobalt Sulphate solution is gradually co precipitated using an aqueous solution of Sodium Hydroxide with constant stirring, forming crystallized Nickel Hydroxide, which is subsequently washed, dewatered, and then dried. Thus, the active material for the positive electrode contains mainly of Nickel Hydroxide (Ni(OH)2) with a small quantity of co-precipitated Cobalt Hydroxide. To enable electricity to percolate well formation of an electrically conductive network is imperative for an efficient utilization of the Nickel Hydroxide-based active material. The cobalt hydroxide is added mainly to impart electric conductivity to the Nickel Hydroxide and is readily oxidized at the time of initial charging to form an electrically conductive micro scale network comprising of Cobalt Oxyhydroxide (COOOH). The graphite addition imparts a conductivity increase to the Nickel Hydroxide structure on a macro scale.

d) During charging, the Nickel Hydroxide will undergo oxidation process thereby converting it into Nickel Oxyhydroxide. During discharge, the Nickel Oxyhydroxide is reduced to Nickel Hydroxide (Ni(OH)2).

e) Nickel-Cadmium batteries with Nickel Hydroxide (Ni(OH)2) as the positive electrode and Cd(OH)2 as the negative electrode are mainly used as back-up power for critical industrial sectors, including oil & gas, mobility segments like air, railways and all metro systems and thermal power systems.

3.2. The classification proposed by the applicant for the Nickle Hydroxide Compound with minor constituent of Cobalt Hydroxide (Co(OH)2) and Graphite, following the principles of the General Rules of Interpretation is tariff entry 28254000.

3.3. The applicant has also relied upon the decision of the Hon'ble Tribunal in the case of OCL India Vs. Commissioner of Customs, Visakhapatnam, on the issue of classification of fused Magnesium Chromide.

3.4.The applicant has claimed that consequent to the classification of the compound of Nickel Hydroxide under the above-cited tariff entry, the goods would also eligible to avail the benefit of Notification No. 50/2017- Customs dated 30.06.201 (Sr. No.180) which allows nil rate of duty to 'Nickel Oxide and Hydroxide' classified under 28254000.

4. Comments were received from the jurisdictional Commissionerate Viz. Commissioner of Customs (Preventive), Vijayawada vide letter dated 26.11.2021 which is as follows:-

   a) Chapter 28 is limited to separate chemical elements and separate chemically defined compounds. Even though in the market parlance the material is known as Nickel Hydroxide, the material proposed to be imported is not mere Nickel Hydroxide, but a mixture/compound of different compounds/elements. Thus, the product appears to be classifiable under tariff entry 285390902 as "Other Inorganic compounds" and thus, not qualified to enjoy the benefit under Sr.No.180 of No.50/2017-Customs, dated 30.06.2017.

   b) The applicant quoted the case of OCL India Vs. Commissioner of Customs, Visakhapatnam, the Hon'ble Tribunal on the issue of classification of fused Magnesium Chromide. The item under dispute in the case was 69.3% Magnesium Oxide. The said case law is not applicable to the present product as it is not a single compound but it is a mixture/compound of Nickel Hydroxide with constituents of Cobalt Hydroxide (Co(OH)2) and Graphite.

5. The personal hearing was attended by Shri Aranyak Sen, Shri Nischal and Shri Satish Reddy, representatives of the applicant and Shri Vijaykumar Kavilikatta, representative of the jurisdictional Commissioner.

   The representatives of the applicant explained the product features and on a question as to the remaining constituents, the reply was Graphite.

Shri Vijaykumar stated that the appropriate sub heading is 28539000, alternatively they are proposing chapter 38. It is his opinion that the product in question is not a separate chemically defined compound.

6. Further comments were received from the jurisdictional commissionerate vide letter dated 15.12.2021 which is as follows:-
   a) The heading 3824 covers, inter alia, chemical products and preparations of the chemical or allied industries, not elsewhere specified. The heading 3824 covers "prepared" or "Preparations of the chemical or allied industries" which are not elsewhere specified or included. Once, the product in question is specifically covered by heading 2853 as "other inorganic compound", it cannot be classifiable under 3823 since it is elsewhere specified or included. Thus, it is submitted that heading 3824 covers only those products which are not more specifically included in the preceding chapters from 28 to 37 of section VI of the customs tariff.
   b) They relied on the US Customs Ruling HQ H026743, where the issue involved the classification of almost identical goods as that of present case and the Director, Commercial and Trade Facilitation Division after considering the competing tariff entries i.e. heading 2853 and heading 3824, has held that "Mixed Metal Hydroxide (MMH) is classifiable under heading 2853.

7. Rebuttal of the above comments of the jurisdictional comissionerate was filed by the applicant vide their letter dated 29.11.2021 which is as follows:-
   a) The product proposed to be imported, Viz, Nickel Hydroxide compound is a single chemical compound rather than a mixture of Nickel Hydroxide (Ni(OH)2) and Cobalt Hydroxide(Co(OH)2. The product is still called Nickel Hydroxide in trade parlance and the battery is widely known as Nickel Cadmium battery, even if there is some presence of Cobalt and Graphite. Hence, the reference to Nickel Hydroxide in tariff entry 28254000 should be taken as covering the compound of Nickel Hydroxide, even if there are other minor constituents.
   b) Even though, the Vijayawada commissionerate has proposed classification under the residuary heading of 285390902. (a 9-digit heading, which does not exist in Indian customs tariff, they presume this is tariff entry 28539090 ('other inorganic compounds'). Classification under a residuary heading should be resorted to, only if there is no other

heading suitable or more specific to the product. This averment is strongly supported by the following judgements of Hon'ble Supreme Court.

i. Dunlop India LW. v. Union of India & Others - 1976 (2) SCC 241
ii. HPL CHEMICALS LTD. VERSUS CCE, CHANDIGARH reported in 2006 (4) TMI 1
iii. M/s Bharat Forge and Press industries (P) Ltd. v. Collector of Central Excise, Baroda, Gujarat - 1990 (1) SCC 532.

c) Reliance is placed on the CBIC (erstwhile CBEC) Circular No. 574/11/2001-CX, dated 22.02.2001.
d) The US Cross Ruling HQ HO26743, while briefly mentions the tariff entry 2825 in the beginning of the ruling, the discussion in the ruling is between the headings 2853 and 3824.

8. I have gone through the application, submissions made by the applicant, the comments of the jurisdictional commissionerate and the rebuttal of the applicant.

8.1. The applicant wants to import goods viz. NICKEL HYDROXIDE (Ni(OH)2) which is the main raw material used to make positive electrode plates used in NICKEL CADMIUM batteries. Nickel-Cadmium batteries have two electrodes (Nickel and Cadmium Hydroxides) immersed in a Potash solution. The positive electrode consists of Nickel Hydroxide, while the negative one is made from Cadmium. The electrolyte is generally based on potash. The applicant has submitted that the NICKEL HYDROXIDE compound is majorly NICKEL HYDROXIDE (70-85%) with a small portion of co-precipitated Cobalt Hydroxide - Co(OH)2 (1-5%), and balance contains Graphite (12-18%) along with moisture (2-8%) for density and free flow ability.

8.1.1. Further, they have elaborated the process followed to make Nickel Hydroxide wherein Nickel Sulphate solution and small quantity of Cobalt Sulphate solution is gradually coprecipitated using an aqueous solution of Sodium Hydroxide with constant stirring, forming crystallized Nickel Hydroxide, which is subsequently washed, dewatered, and then dried. Thus, the active material for the positive electrode contains mainly of Nickel Hydroxide (Ni(OH)2) with a small quantity of co-precipitated Cobalt Hydroxide. To enhance electrical connectivity, formation of an electrically conductive network is imperative for an efficient utilization of the Nickel Hydroxide-based active material. The Cobalt Hydroxide is added mainly to impart

electric conductivity to the Nickel Hydroxide and is readily oxidized at the time of initial charging to form an electrically conductive micro scale network comprising of Cobalt Oxyhydroxide(COOOH). The Graphite addition imparts increase in the conductivity to the Nickel Hydroxide structure on a macro scale. During charging, the Nickel Hydroxide will undergo oxidation thereby, converting it into Nickel Oxyhydroxide. During discharge, the Nickel Oxyhydroxide is reduced to Nickel Hydroxide (Ni(OH)2). Nickel-Cadmium batteries have Nickel Hydroxide (Ni(OH)2) as the positive electrode and Cd(OH)2 as the negative electrode.

8.1.2. The applicant has further submitted with regard to the classification that, since the proposed goods is primarily Nickel Hydroxide with minor constituent of Cobalt Hydroxide (Co(OH)2) and Graphite. It is therefore, classifiable under tariff entry 2825 following the principles of the General Rules of Interpretation.

8.1.3 The jurisdictional commissionerate, in their letter dated 26.11.2021 has objected to the classification of the proposed goods under tariff entry 2825 claiming that even though in the market parlance the material is known as Nickel Hydroxide, the material proposed to be imported is not mere Nickel Hydroxide, but a mixture/ compound of different compounds/elements that are having chemically defined compounds. Thus, the product appears to be classifiable under tariff entry 285390902 (Other inorganic compounds) and thus not qualified to enjoy the benefit under Sr.No.180 of Notification No.50/ 2017-Customs, dated 30.06.2017. During the course of personal hearing the representative of the jurisdictional commissioner submitted that if not heading 2853 Nickel Hydroxide (Ni(OH)2) should be classified under heading 3824. However, in their additional submissions dated 15.12.2021 they reiterated their initial stand that the proposed goods should be classified under heading 2853 only. To substantiate their argument, they relied on the US Customs Ruling HQ H026743, where the issue involved the classification of almost identical goods was considered and after considering the competing tariff entries, i.e., headings 2853 and 3824, it was held that "Mixed Metal Hydroxide (MMH) is classifiable under heading 2853.

8.1.3. The applicant vide their letter dated filed rebuttal to the comments of the jurisdictional commissionerate and stated that the proposed goods is nothing but single chemical compound and merits classification under 2825.

8.2. Chapter Note 1(a) to the Chapter 28 reads as under:

Except where the context otherwise requires, the headings of this chapter apply only to:

(a) separate chemical elements and separate chemically defined compounds, whether or not containing impurities.

(b) the products mentioned in (a) above dissolved in water;

(c) the products mentioned in (a) above dissolved in other solvents, provided that the solution constitutes a normal and necessary method of putting up these products adopted solely for reasons of safety or for transport and that the solvent does not render the product particularly suitable for specific use rather than for general use;

Therefore, to be classified under Chapter 28 it is essential that the product should either be a separate chemical elements or a separate chemically defined compound, whether or not containing impurities. The proposed goods, i.e., Nickel Hydroxide compound contains upto 80% Nickle Hydroxide (Ni(OH)2) and 1-5% of Cobalt Hydroxide with the remaining being Graphite.

8.2.1. The General Chapter note to Chapter 28 of Explanatory Notes to the Harmonized Commodity Description and Coding System (Harmonized System) specifically mentions separate chemical elements which is as follows:-

"Unless the context otherwise requires, Chapter 28 is limited to separate chemical elements and separate chemically defined compounds. A separate chemically defined compound is a substance which consists of one molecular species (e.g., covalent or ionic) whose composition is defined by a constant ratio of elements and can be represented by a definitive structural diagram. In a crystal lattice, the molecular species corresponds to the repeating unit cell. The elements of a separate chemically defined compound combine in a specific characteristic proportion determined by the valency and the bonding requirements of the individual atoms. The proportion of each element is constant and specific to each compound and it is therefore said to be stoichiometric. Small deviations in the stoichiometric ratios can occur because of gaps or insertions in the crystal lattice. These compounds are described as quasi-stoichiometric and are permitted as separate chemically defined compounds provided that the deviations have not been intentionally created."

8.2.2. Further Chapter note 1 to Chapter 28 of Explanatory Notes to the Harmonized Commodity Description and Coding System (Harmonized System) defines separate chemical elements and separate chemically defined compounds as follows:

"Separate chemical elements and separate chemically defined compounds containing impurities, or dissolved in water, remain classified in Chapter 28.

The term " impurities " applies exclusively to substances whose presence in the single chemical compound results solely and directly from the manufacturing process (including purification). The substances may result from any of the factors involved in the process and are principally the following:

(a) Unconverted starting materials.

(b) Impurities present in the starting materials.

(c) Reagents used in the manufacturing process (including purification).

(d) By products.

It should be noted, however, that such substances are not in all cases regarded as "impurities" permitted under Note 1 (a). When such substances are deliberately left in the product with a view to rendering it particularly suitable for specific use rather than for general use, they are not regarded as permissible impurities.

It should be noted, however, that such substances are not in all cases regarded as "impurities" permitted under Note 1 (a). When such substances are deliberately left in the product with a view to rendering it particularly suitable for specific use rather than for general use, they are not regarded as permissible impurities.

Such elements and compounds are excluded from Chapter 28 when they are dissolved in solvents other than water, unless the solution constitutes a normal and necessary method of putting up these products adopted solely for reasons of safety or for transport (in which case the solvent must not render the product particularly suitable for some types of use rather than for general use).

Thus, carbon chloride oxides dissolved in benzene, alcoholic solutions of ammonia and colloidal solutions of aluminium hydroxide are excluded from this Chapter and fall to be classified in heading 38.24. Generally speaking, colloidal dispersions fall in heading 38.24, unless covered by a more specific heading.

Separate chemically defined elements and compounds as described above, put up with an added stabiliser necessary for their preservation or transport, remain classified in this Chapter. For example, hydrogen peroxide stabilised by addition of boric acid remains classified in heading 28.47; but sodium peroxide mixed with catalysts (for production of hydrogen peroxide) is excluded from Chapter 28 and is classified in heading 38.24.

Products added to certain chemicals to keep them in their original physical state are also to be regarded as stabilisers, provided that the quantity added in no case exceeds that necessary to achieve the desired result and that the addition does not alter the character of the basic product and render it particularly suitable for specific use rather than for general use. By application of these provisions anti caking agents may be added to the products of this Chapter. Such products with added water repellents are, on the other hand, excluded since such agents modify the original characteristics of the products.

On the same condition that the additions do not render them particularly suitable for specific use rather than for general use, the products of this Chapter may also contain :

(a) Added anti dusting agents (e.g., mineral oil added to certain poisonous chemicals to prevent dusting during handling).

(b) Colouring substances added to facilitate identification or added for safety reasons to dangerous or poisonous chemicals (e.g., lead arsenate of heading 28.42) as a "marker" or warning to those handling the products. Products to which colouring substances have been added for other reasons (e. g., silica gel with cobalt salts added for use as a humidity indicator (heading 38.24)) are, however, excluded."

8.2.3. The proposed goods is Nickle Hydroxide Compound (containing 78-80% of Nickle Hydroxide, 2 to 2.5% of Cobalt Hydroxide and balance Graphite).. Nickle Hydroxide is no doubt a separate chemically defined compound, so is the case with Cobalt Hydroxide. Further Graphite is a separate chemical element consisting of carbon. In any case the predominance is of Nickle Hydroxide in the proposed goods. The only question which needs to be addressed here is whether the addition of Cobalt Hydroxide and Graphite in small quantities takes the compound out of the purview of heading 2825. As per the Chapter note 1 of Chapter 28 of the HSN, separate chemical elements and separate chemically defined compounds can include impurities. Further, Chapter Note 1 to the explanatory notes to HSN as detailed above allows certain additions e.g., colouring agents, anti-dusting agents, stabilizers provided these additions

do not render the goods particularly suitable for specific use rather than general use. As it can be seen in the case of the proposed goods, the addition of Cobalt Hydroxide and Graphite is done only for the purpose of improving the performance and life cycle of Nickle Hydroxide. The proposed goods have to be used in conjunction with Cadmium to manufacture batteries. Therefore, it stands to reason that Cobalt Hydroxide or Graphite doesn't make the Nickle Hydroxide suitable for specific purpose as compared to what is originally intended. It is clear that addition of those elements / compounds only enhance the performance of Nickle Hydroxide and nothing else.

8.3 The Jurisdictional Commissionerate has relied upon a US Cross Ruling HQ H026743 classifying an identical matter. The US Cross Ruling holds as follows:-

> *" As previously stated, the instant merchandise is specifically described by Chapter note 1 to Chapter 28 as a separate chemically defined compound and by heading 2853 as an other inorganic compound. Inasmuch as the merchandise is classified in heading 2853, HTSUS, it cannot be classified in Chapter 38, HTSUS."*

8.3.1. Therefore the US Cross Ruling also holds it as separate chemically defined compound but to understand why it went to classify the same in heading 2853 rather than heading 2825, I am reproducing the relevant entry for heading 2825 of Harmonized Tariff Schedule of the United States retrieved from the website https://hts.usitc.gov/current:-

Heading/ Subheading	Stat. Suf-fix	Article Description	Unit of Quantity	2
2825 (con.)		Hydrazine and hydroxylamine and their inorganic salts; other inorganic bases; other metal oxides, hydroxides and peroxides: (con.)		
2825.50		Copper oxides and hydroxides:		
2825.50.10	00	Cupric oxide.....	kg.....	31%
2825.50.20	00	Cuprous oxide.....	kg.....	39.5%
2825.50.30	00	Copper hydroxides.....	kg.....	32.5%
2825.60.00	00	Germanium oxides and zirconium dioxide.....	kg.....	25%
2825.70.00	00	Molybdenum oxides and hydroxides.....	kg.....	20.5%

2825.80.00	00	Antimony oxides.....	kg.....	4.4¢/kg
2825.90		Other:		
2825.90.10	00	Beryllium oxide and hydroxide.....	kg.....	25%
2825.90.15	00	Niobium oxide.....	kg.....	25%
2825.90.20	00	Tin oxides.....	kg.....	25%
2825.90.30	00	Tungsten oxides.....	kg..... W kg	45.5%
2825.90.75	00	Cadmium oxide.....	kg.....	25%
2825.90.90	00	Other.....	kg.....	25%

8.3.2. It can be seen from the above that there is no specific entry for Nickle Oxide and Nickle Hydroxide in the US customs tariff under heading 2825 unlike the customs tariff of India where it is specifically provided for at tariff entry 28254000 which is as follows:

2825		**HYDRAZINE AND HYDROXYLAMINE AND THEIR INORGANIC SALTS; OTHER INORGANIC BASES; OTHER METAL OXIDES, HYDROXIDES AND PEROXIDES**			
2825 10	-	*Hydrazine and hydroxylamine and their inorganic salts :*			
2825 10 10	---	Hydrazine anhydrous	kg.	10%	-
2825 10 20	---	Hydrazine hydrate	kg.	10%	-
2825 10 30	---	Hydrazine sulphate	kg.	10%	-
2825 10 40	---	Hydroxylamine sulphate	kg.	10%	-

(1)		(2)	(3)	(4)	(5)
2825 10 90	---	Other	kg.	10%	-
2825 20 00	-	Lithium oxide and hydroxide	kg.	10%	-
2825 30	-	*Vanadium oxides and hydroxides :*			
2825 30 10	---	Vanadium pentaoxide flakes	kg.	10%	-
2825 30 90	---	Other	kg.	10%	-
2825 40 00	-	Nickel oxides and hydroxides	kg.	10%	-
2825 50 00	-	Copper oxides and hydroxides	kg.	10%	-
2825 60	-	*Germanium oxides and zirconium dioxide :*			
2825 60 10	---	Germanium oxides	kg.	10%	-
2825 60 20	---	Zirconium dioxide	kg.	10%	-

2825 70	-	*Molybdenum oxides and hydroxides :*			
2825 70 10	---	Molybdenum trioxide	kg.	10%	-
2825 70 20	---	Molybdic acid	kg.	10%	-
2825 70 90	---	Other	kg.	10%	-
2825 80 00	-	Antimony oxides	kg.	10%	-
2825 90	-	*Other :*			
2825 90 10	---	Tin oxide	kg.	10%	-
2825 90 20	---	Cadmium oxide	kg.	10%	-
2825 90 40	---	Calcium hydroxide	kg.	10%	-
2825 90 50	---	Ammonium hydroxide	kg.	10%	-
2825 90 90	---	Other	kg.	10%	-

8.4. Classification of imported goods is governed by the principles set forth in the General Rules of Interpretation (GIR). Rule 1 of GIR provides that for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions [that is, GIRs 2 to 6]. This is the first Rule to be considered in classifying any product. In other words, if the goods to be classified are covered by the words in a heading and the Section and Chapter Notes do not exclude classification in that heading, the heading would apply to the said goods. As required under Rule 1 of GIRs, the classification of the compound of Nickel Hydroxide is determinable according to the terms of heading and relative Chapter Note of Chapter 28 and these headings or Notes do not leave any ambiguity that proposed goods, which is a separately defined chemical compound, is aptly classifiable under HSN Code 28254000 of heading 28.

8.4.1. As per the chapter notes to chapter 28, separately defined chemical compounds would remain classified under chapter 28, whether or not containing impurities. The Nickel Hydroxide, though containing cobalt and graphite in minor quantities, remains suitable for general use in manufacture of Nickel Cadmium batteries. The presence of cobalt and graphite does not render the product suitable for any different use or for a specific use. The additives merely improve the performance and life cycle of Nickel Hydroxide. As stated in the explanatory notes to heading 2825, Nickel Hydroxide is a fine green powder used in electroplating, as a constituent of plates. The mixture of cobalt does not form any distinctive new product, which remains as Nickel Hydroxide. Also, only Nickel Hydroxide (positive electrode) will react with the negative electrode (Cadmium). The battery is widely known as Nickel Cadmium battery, even if there is some presence of Cobalt and Graphite. The additives

are minor and do not change the nature or function of the compound; they enhance the performance and life cycle of the Nickel electrode. The formation of the electrically conductive network favourably impacts the utilization of the active material, which is Nickel Hydroxide.

8.4.2. Inclusion of Cobalt metal as a conducting additive during the electrode fabrication of pasted electrodes is expected to enhance the electrochemical performance of Nickel Hydroxide. Thus, the addition of Cobalt does not change the character and application of Nickel Hydroxide. Hypothetically, Nickel Hydroxide does not act as a reaction initiator, accelerator or catalyst to any product, and it cannot do so even with refinement or enrichment processes. Thus, the proposed goods is classifiable under tariff entry 28254000, on the basis of its nature and composition in terms of the chapter notes and the rule 1 of the GIR.

8.4.3. Further, Rule 2 (b) of GIR states that 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.

8.4.4. As per the general Rule 3 (a) of General Interpretation Rules, the specific heading shall prevail over the general heading. In this case there is a specific heading for Nickel Hydroxide under the tariff entry 28254000. The tariff entry 2853 is a general and residuary entry. In this regard, the Hon'ble Supreme Court in the case of DUNLOP INDIA LTD & MADRAS RUBBER FACTORY LTD Vs UNION OF INDIA AND OTHERS reported in 2002-TIOL-647-SC-CUS-LB , has held as follows:

> *"When an article has, by all standards, a reasonable claim to be classified under an enumerated item in the Tariff Schedule, it will be against the very principle of classification to deny it the parentage and consign it to an orphanage of the residuary clause"*

Therefore the proposed goods are appropriately classified under the specific tariff entry 28254000.

8.5. The jurisdictional commissionerate in their initial letter dated 26.11.2021 claimed that the proposed goods should be classified under heading 2825, however during the hearing has stated that alternate classification could chapter 38. However, in their final submission dated 15.12.2021 they reiterated their earlier stand that the proposed goods should be classified under heading 2853. They have claimed that products that are falling under heading 2853 (not under other heading of chapter 28) are not necessarily be a chemically defined compound. In this regard I find that this exception in heading 2853 is only for Phosphides and not for other inorganic compounds.

8.5.1. Further Explanatory Notes to HSN also provides for products which remain classified in Chapter 28, even when they are not separate chemical elements nor separate chemically defined compounds and includes the following products:

Heading 28.02 • Colloidal sulphur.

Heading 28.03 • Carbon blacks.

Heading 28.07 • Oleum.

Heading 28.08 • Sulphonitric acids.

Heading 28.09 • Polyphosphoric acids.

Heading 28.13 • Phosphorus trisulphide.

Heading 28.18 • Artificial corundum.

Heading 28.21 • Earth colours containing 70 % or more by weight of combined iron evaluated as Fe2 O3 .

Heading 28.22 • Commercial cobalt oxides.

Heading 28.24 • Red lead and orange lead.

Heading 28.28 • Commercial calcium hypochlorite.

Heading 28.30 • Polysulphides.

Heading 28.31 • Dithionites and sulphoxylates, stabilised with organic substances.

Heading 28.35 • Polyphosphates.

Heading 28.36 • Commercial ammonium carbonate containing ammonium carbamate.

Heading 28.39 • Commercial alkali metal silicates.

Heading 28.42 • Aluminosilicates.

Heading 28.43 • Colloidal precious metals. • Amalgams of precious metals. • Inorganic or organic compounds of precious metals.

Heading 28.44 • Radioactive elements, radioactive isotopes, or compounds (inorganic or organic) and mixtures containing these substances.

Heading 28.45 • Other isotopes and their compounds (inorganic or organic).

Heading 28.46 • Compounds, inorganic or organic, of rare•earth metals, of yttrium or of scandium or of mixtures of these metals.

Heading 28.48 • Phosphides.

Heading 28.49 • Carbides.

Heading 28.50 • Hydrides, nitrides, azides, silicides and borides.

Heading 28.51 • Liquid air and compressed air. Amalgams other than amalgams of precious metals (under heading 28.43 above).

Therefore, the proposed goods cannot be classified under Chapter heading 2853.

8.5.2. Further since the jurisdictional commissionerate had proposed Chapter 38 as an alternate classification during the personal hearing, I will also discuss whether the proposed goods can be classified under the same. The Chapter Note 1 specifically mentions that this Chapter does not cover separate chemically defined elements or compounds (usually classified in Chapter 28 or 29), with the exception of the following :

(1) Artificial graphite (heading 38.01).

(2) Insecticides, rodenticides, fungicides, herbicides, anti sprouting products and plant growth regulators, disinfectants and similar products, put up as described in heading 38.08.

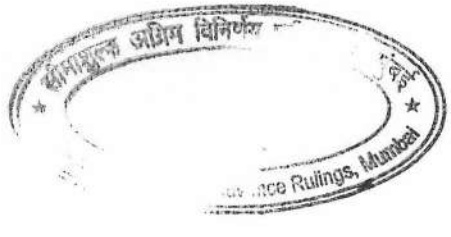
(3) Products put up as charges for fire extinguishers or put up in fire extinguishing grenades (heading 38.13).

(4) Cultured crystals (other than optical elements) weighing not less than 2.5 g each, of magnesium oxide or of the halides of the alkali or alkaline earth metals (heading 38.24).

(5) Ink removers put up in packing for retail sale (heading 38.24).

Thus since the proposed goods is a compound of Nickle Hydroxide with a small amount of Cobalt Hydroxide and Graphite, it does not fall under any of the above exception.

9. Thus, it is in terms of the chapter note 1 of chapter 28 read with Rules 1, 2 and 3(a) of the GIR, the goods proposed to be imported i.e. I-MAS POS, consisting of Nickle Hydroxide (78-80%), Cobalt Hydroxide (2-2.5%), Graphite (12-18%) and moisture (2.8%) is classifiable under sub-heading 28254000. The applicant has claimed that consequent to the classification



of the impugned under sub-heading 28254000 of the first schedule to the Tariff Act, 1975, the Nickle Hydroxide compound is also eligible to avail the benefit of Notification no. 50/2017 dated 30.06.2017 entry Sr. No.180 which covers 'Nickel oxide and hydroxide' classified under 2825 40 00 at nil rate of duty.

19/01/2022

(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 Smartage Projects Pvt. Ltd. Regd. Office 303, Star Hub, Bldg No.1 off International Airport Road, Andheri (East), Mumbai- 400099
   Email: info@smartageprojects.com

2. The Principal Commissioner of Customs (Preventive)(CPC), 55-17-3, C-14, 2nd Road, Industrial Estate, Auto Nagar, 1. Vijayawada (AP) – 520007
   Email: commr.cpc-ap@gov.in

3. The Customs Authority for Advance Rulings, 5th Floor, NDMC Building, Yashwant Place, Satya Marg, Chanakyapuri, New Delhi - 110021.
   Email: cus-advrulings.del@gov.in

4. The 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 (Customs), Central Boards of Indirect Taxes & Customs, North Block, New Delhi-110001.
   Email: mem.cus-cbec@nic.in

7. The Webmaster, Central Boards of Indirect Taxes & Customs.
   Email: webmaster.cbec@icegate.gov.in

8. Guard file.

19/1/2022

(P. Vinitha Sekhar)
Secretary,
Customs Authority for Advance Rulings,
Mumbai

मुख्य आयुक्त सीमाशुल्क
CHIEF COMMISSIONER OF CUSTOMS
19 JAN 2022

सीमाशुल्क अग्रिम निर्णय प्राधिकरण, मुंबई
Customs Authority For Advance Rulings, Mumbai

सीमाशुल्क अग्रिम विनिर्णय प्राधिकरण

CUSTOMS AUTHORITY FOR ADVANCE RULINGS

नवीन सीमाशुल्क भवन, बेलार्ड इस्टेट, मुंबई - ४०० ००१

NEW CUSTOM HOUSE, BALLARD ESTATE, MUMBAI - 400 001

E-MAIL: cus-advrulings.mum@gov.in

F.No. CAAR/CUS/APPL/74/2021- 0/o Commr-CAAR-MUMBAI **Dated: 19.01.2022**

Ruling Nos. CAAR/Mum/ARC/02/2022

S.No.	Complete Address	Barcode
1.	M/s s Smartage Projects Pvt Ltd, Regd Office 303, Star Hub, Bldg. No.1, Off International Airport Road,Andheri (East), Mumbai- 400099	**EM882788080IN**
2.	The Pr. Commissioner of Customs (Preventive)(CPC), 55-17-3, C-14, 2nd Floor, Road No. 2, Industrial Estate, Autonagar, Vijayawada (Andhra Pradesh) – 520007	**EM882788195IN**
3.	The Customs Authority for Advance Rulings, 5th Floor, NDMC Building, Yashwant Place, Satya Marg, Chanakyapuri, New Delhi-110021.	**EM882788076IN**
4.	The Chief Commissioner (AR), Customs Excise & Service Tax Appellate Tribunal (CESTAT), West Block-2, Wing-2, R.K. Puram, New Delhi-110066.	**EM882787963IN**
5.	The Member(Customs), Central Boards of Indirect Taxes & Customs, North Block, New Delhi-110001	**EM882787950IN**

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