



CUSTOMS AUTHORITY FOR ADVANCE RULINGS
O/o THE CHIEF COMMISSIONER OF CUSTOMS
NEW CUSTOM HOUSE, NEAR IGI AIRPORT, NEW DELHI-110037
[Email: cus-advrulings.del@gov.in]

F. No. VIII/CAAR/Delhi/ L.S. Metal/66/2023

Present

Samar Nanda (Customs Authority for Advance Rulings, New Delhi)

The day of 09th April, 2024

Order No. CAAR/Del/L.S. Metal/03/2024

771
9/4/2024

In Application No. 37/2023-Delhi dated 12.01.2024

Name and address of the applicant:

LS Metal Vina LLC,
Land plot CN1H, Deep C 2B Industrial zone,
Dinh vu – Cat Hai economic zone, Dong Hai 2
ward, Hai An district, Hai phong city, Vietnam

Commissioner concerned:

Commissioner of Customs,
ICD, Patpartganj, Delhi.

Present for the Applicant:

Mr. T. Vishwanathan, Advocate,
Ms. Anjali Hirawat, Advocate,
Ms. Antara Bhide, Advocate,
Mr. Bae Joon Sung, Representative of L.S.
Metal

Present for the Department:

None.



Order

M/s L S Metal Vina LLC, Land plot CN1H, Deep C 2B industrial zone, Dinh vu - Cat Hai economic zone, Dong Hai 2 ward, Hai An district, Hai phong city, Vietnam hereinafter referred to as '**the applicant**', in short filed an application (CAAR-1) for advance ruling before the Customs Authority for Advance Rulings, New Delhi (CAAR in short). The complete application was received in the secretariat of the CAAR, New Delhi on 12.01.2024 along with their enclosures in terms of Section 28H (1) of the Customs Act, 1962 (hereinafter referred to as the 'Act' also). The applicant is engaged in the business of export of Copper Tubes in India and sought the determination of Origin of Copper Tubes exported to India and eligibility of such Copper Tubes for benefit of ASEAN-India Free Trade Agreement (AIFTA).

2. The applicant submitted that the company, M/s LS Metal Vina LLC, Vietnam (hereinafter referred to as "**Applicant**") is a Company engaged in the manufacture and export of Copper Tubes and Stainless-Steel Pipes to various countries. The Applicant is filing the present application as an exporter of the Copper Tubes to India manufactured by them in their own factory with the below details: -

- (a) the Indian importer places a purchase order on the Applicant for export of copper tubes;
- (b) the Applicant manufactures the copper tubes and exports the copper tubes directly from Vietnam to India;
- (c) the Applicant raises invoice on Indian importer for supply of copper tubes to importer in India;

2.1. The application further submitted that Vietnam is a part of Association of Southeast Asian Nations (ASEAN). India has signed Free Trade Agreement with ASEAN countries, viz., ASEAN-India Framework Agreement on Comprehensive Economic Cooperation (hereinafter referred as "**AIFTA**"). Under the AIFTA, India has agreed to reduce the rate of customs duty on certain goods imported from Vietnam, either with immediate effect or over a specified period.

2.2. The concessional rate of duty benefit under the AIFTA is affected vide Notification No. 46/2011-Customs dated 01.06.2011 ('**AIFTA Notification**') issued by the Central Government under Section 25(1) of the Customs Act, 1962. The AIFTA Notification vide S. No. 984 thereof prescribes benefit of concessional rate of duty in respect of the copper tubes imported into India from Vietnam.



2.3. The aforesaid benefit is available subject to the goods fulfilling the rules of origin requirement. The rules pertaining to determination of originating criteria for availing benefits under the AIFTA are provided in the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009 ('**Rules of Origin**') notified by the Government of India vide Notification No. 189/2009-Cus (N.T.) dated 31.12.2009 issued under Section 5(1) of the Customs Tariff Act, 1975.

2.4.1. As per Rule 4 of the Rules of Origin, goods not wholly obtained or produced in territory of the exporting party can be considered as originating goods, if it satisfies the following 3 conditions:

- (a) Local value-added content is not less than 35% of the FOB value;
- (b) Non-originating materials have undergone a change in tariff sub-heading i.e. at six-digit level;
- (c) The final process of production must be performed within the territory of the exporting party.

2.4.2. Further, Rule 6 of the Rules of Origin provides for Cumulative rule of origin. As per the said rule, if the products originate exclusively in the territory of a Party and are used as materials in the production of another product in the territory of other Party, then such products shall be treated as originating in the territory of the other Party. Consequently, the inputs originating in one ASEAN country and used in the manufacture of goods exported from another ASEAN country shall be treated as originating materials for the purposes of the goods exported from another ASEAN country. For instance, if the input originating from Indonesia is used in the manufacture of goods in Vietnam which are then exported to India, the inputs originating in Indonesia will be considered as originating in Vietnam for the purposes of determination of origin criteria of the goods manufactured in Vietnam.

Sourcing of copper cathodes for manufacture of copper tubes and fulfilment of value addition criterion under the AIFTA

2.5. The Applicant is a manufacturer of copper tubes and exports the same to various countries such as India, Japan, Italy, Turkey, etc. For manufacture of copper tubes, the Applicant imports copper cathodes from two sources, i.e., Indonesia (ASEAN country) & non-ASEAN countries such as Australia, Congo and Korea.

2.6. With regard to the sourcing of the copper cathodes, the following additional points are relevant to note:



The ratio of copper cathodes required in the manufacture of copper tubes is approximately 1:1, i.e., approximately 1 MT of copper cathodes is required to manufacture 1 MT of copper tubes. The price of the copper cathodes imported from Indonesia is higher than the price of copper cathodes imported from non-ASEAN countries. The value of copper cathodes constitutes close to 90% of the cost of the copper tubes manufactured out of it.

2.7. The Applicant adopts the following model to ensure that the copper tubes exported to India fulfil the value addition requirement of 35% prescribed under the Rules of Origin:

- (a) The Applicant places order on the Indonesian supplier for supply of copper cathodes based on the volume of orders received for export of copper tubes to India. From the records available, it can be easily verified that the Applicant has procured copper cathodes from Indonesia for use in the manufacture of copper tubes.
- (b) As regards the import of copper cathodes from non-ASEAN countries, the above determination is not done. The copper cathodes are imported and stored by the Applicant and are used in manufacture of copper tubes as and when required.
- (c) Since the ratio of the copper cathodes and copper tubes is approximately 1:1, and the value of copper cathodes constitute close to 90% of the cost of the copper tubes, the Applicant issues copper cathodes imported from Indonesia for use in the manufacture of copper tubes to be exported to India in such a manner that the value addition requirement of 35% prescribed under the Rules of Origin is satisfied.
- (d) Over and above the quantity of ASEAN origin copper cathodes required to fulfil the aforesaid value addition requirement, the Applicant uses the copper cathodes imported from non-ASEAN countries. In other words, the copper tubes are manufactured out of copper cathodes imported from Indonesia as well as non-ASEAN countries.
- (e) The reason for using a combination of copper cathodes imported from Indonesia and non-ASEAN countries is that the Indonesian copper cathodes are costlier than those imported from non-ASEAN countries as mentioned in para 1.14 (c) above. Further, it is reiterated that the Indonesian copper cathodes are used in the manufacture of copper tubes to be exported to India only to the extent they are required to fulfil the value addition requirement.
- (f) It is being reiterated here that the copper cathodes originating in Indonesia and imported by the Applicant for use in the manufacture of copper tubes in Vietnam are treated as originating in Vietnam. It is for this reason that the Indonesian origin copper cathodes are being used in the manufacture of copper tubes



exported to India, so that the requirement of value addition is achieved and submitted the requisite documents such as (i) Cost sheet evidencing that copper tubes satisfy the value addition criteria, (ii) Commercial invoice; (iii) Packing List & Bill of Lading; and (iv) Customs Declaration, to the Issuing Authority in Vietnam for issuance of Certificate of Origin ('COO') in respect of the copper tubes to be exported to India.

2.8. On the strength of the COO issued by the Issuing Authority in Vietnam and provided by the Applicant to the importer in India, the importer avails the benefit of the AIFTA Notification in respect of the copper tubes exported by the Applicant. An analysis of the data filled up in a sample Form I [issued under Notification No. 81/2020 –Cus (N.T.) dated 21.08.2020 notifying the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020] would also show that the copper tubes exported by the Applicant satisfy the origin criteria.

2.9. In the light of aforementioned, the Applicant seeks to enter the following questions for Advance Ruling:

- (a) Whether the copper tubes exported by the Applicant to India satisfy the origin criteria prescribed under the Rules of Origin issued in terms of AIFTA?
- (b) Whether the copper tubes exported by the Applicant to India are eligible for exemption available under Notification No. 46/2011-Cus dated 01.06.2011 issued by the Indian Government under Section 25(1) of the Customs Act, 1962?

3. As per the provisions of CAAR, comments in the instant matter have been called for which was provided by the concerned Commissionerate wherein the concerned Commissionerate has opposed the claim of the applicant and submitted as under: -

3.1 As stated by the applicant that they are engaged in the manufacture and export of copper tubes to India from Vietnam. The applicant has stated that the said copper tubes are being manufactured by utilizing the Copper Cathodes (raw material primarily used in the manufacturing process) pertaining to both ASEAN (Indonesia) and Non-ASEAN countries. The applicant submits that they intend to use the copper cathodes from both types of countries in such a way that the final products i.e. copper cathode tubes meet origin criterion in terms of Cumulative Rules of Origin under INDO-ASEAN FTA. And they have requested to determine the origin of such copper tubes manufactured as stated above and consequently whether the same would be eligible for exemption available under Notification No. 46/2011-Cus dated 01.06.2011.



3.2 The applicant has claimed the copper tubes to be satisfying the origin criterion under cumulative rules of Origin. The cumulative rule of origin under INDO-ASEAN FTA stipulates that material which are used in a party country and which comply the origin criterion in terms of Rule 3 of Rules of Origin, shall be considered as originating in that party country where working of processing of final product (i.e. copper tubes) has been taken place. This implies that the copper cathodes imported from Indonesia by the applicant shall be satisfying the origin criterion in order to be of Indonesian Origin. However, the applicant has not supplied any such documents.

3.3 Further, the applicant states that they imported copper cathodes from Indonesia constitute more than 50% of the quantity of copper cathodes used in manufacturing copper tubes exported to India. However, the applicant has not submitted any documents which suggests that the Indonesian origin copper cathodes have been exclusively used for manufacturing copper tubes exported to India. This is significant due to the fact the applicant also exports the copper tubes to multiple countries other than India.

3.4 As far as the determination of origin of copper tube is concerned, it is informed that the Jodhpur Preventative Commissionerate, Jaipur Customs had initiated investigation into import of copper tubes by taking FTA benefit from Vietnam and other ASEAN Countries and had found out that the value addition requirement to be unsatisfactory. Due to this, the FTA Cell, CBIC has been requested to thoroughly investigate the matter. Letters have been issued from their office to all Customs formation for provisional assessment under bond and BC of such copper tubes and pipes imports so as to maintain uniformity in clearance and to check any port shifting by importers to evade the said compliance. Further, the matter has been taken up by the National Assessment Centre (NAC) and, as per NAC minutes dated 08.11.2023, it was agreed to assess all Bill of Entry for copper tubes and pipes (CTH 741110) being imported from Vietnam and Thailand claiming India-ASEAN FTA benefit provisionally with Bond and BG as per Rules, or as per Merit duty leviable.

3.5 In view of the above, since, the outcome of an ongoing investigation is pending, this office is of the view that the benefit of reduced or NIL duty on import of copper tubes from Vietnam under Indo-ASEAN FTA may not be allowed till the time investigation on this matter pertaining to the origin of the copper tubes imported from Vietnam is conducted.

4. Accordingly, the matter has been heard in person on 27.03.2024 by virtual mode wherein authorized representative of the applicant attended the same. The crux of the hearing is as under:



The Authorized Representative (AR) of the applicant confirmed receipt of comments of the concerned Commissioner. Referring to the comments, the AR raised the issue of provisional assessment as commented by the concerned Commissionerate however, it was mentioned that in spite of import of such goods from Vietnam, being subjected to provisional assessment, the application for advance ruling is still maintainable. AR also explained, in brief, the issue involved and reiterated the submissions already made in their application for advance ruling. In view of their claim that huge percentage of import of such goods by India, originate from Indonesia, the Authority asked if they can substantiate the claim with some documentary evidence. In reply, the AR submitted that they will be discussing the query with their client and accordingly, submit the document, as desired.

5. I have gone through the records of the matter, submissions of the applicant as well as submissions of the Department. I find that the applicant M/s LS Metal Vina LLC, Land plot CN1H, Deep C 2B industrial zone, Dinh vu – Cat Hai economic zone, Dong Hai 2 ward, Hai An district, Hai phong city, Vietnam hereinafter referred to as '**the applicant**', in short, filed an application (CAAR-1) for advance ruling before the Customs Authority for Advance Rulings, New Delhi (CAAR in short) in terms of Section 28H (1) of the Customs Act, 1962. The applicant is engaged in the business of export of Copper Tubes in India imported from ASEAN and non-ASEAN countries and sought the determination of Origin of Copper Tubes exported to India and eligibility of such Copper Tubes for benefit of Asian-India Free Trade Agreement (AIFTA).

6. I have also gone through the comments of the concerned Commissionerate wherein I find that to determination of origin of copper tube under benefit of Asian-India Free Trade Agreement, Jodhpur Preventative Commissionerate, Japipur Customs had initiated investigation into import of copper tubes taking FTA benefit from Vietnam and other ASEAN Countries and had found out that the value addition requirement to be unsatisfactory. Due to this, the FTA Cell, CBIC has been requested to thoroughly investigate the matter. Letters have been issued to all Customs formation for provisional assessment under bond and BG of such copper tubes and pipes imports so as to maintain uniformity in clearance and to check any port shifting by importers to evade said compliance. Further, the matter has been taken up by the National Assessment Centre (NAC) and, as per NAC minutes dated 08.11.2023, it was agreed to assess all Bill of Entry for copper tubes and pipes (CTH 741110) being imported from Vietnam and Thailand claiming India-ASEAN FTA benefit provisionally with Bond and BG as per Rules, or as per Merit duty leviable. Further, the concerned Commissionerate has requested to consider the situation of ongoing investigation in the matter is pending, the benefit of reduced or NIL duty on import of copper tubes from Vietnam under Indo-ASEAN FTA may



not be allowed till the time investigation on this matter pertaining to the origin of the copper tubes imported from Vietnam is conducted.

7. I also find that during the hearing in the matter, the AR of the applicant submitted that they would submit the requisite documents in their claim but till date, they have not submitted the same to substantiate their claim.

8. Clause 2 of Section 28(1) of the Custom Act 1962 provides that "*The Authority may, after examining the application and the records called for, by order, either allow or reject the application: -*

*Provided that the Authority shall not allow the application³ [***] where the question raised in the application is -*

(a) already pending in the applicant's case before any officer of customs, the Appellate Tribunal or any Court;

(b) the same as in a matter already decided by the Appellate Tribunal or any Court :

Provided further that no application shall be rejected under this sub-section unless an opportunity has been given to the applicant of being heard:

Provided also that where the application is rejected, reasons for such rejection shall be given in the order.

9. In view of the aforesaid circumstances, it is also important to lay emphasis on two orders/rulings issued earlier by CAAR Mumbai and CAAR Delhi, where the matter has been settled as to whether any ruling can be given in situations, where there is an ongoing investigation or the assessment has been made on provisional basis:

(i) According to section 28E(b) of the Act, "advance ruling means 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 prior to its importation or exportation." The very definition of advance ruling, as reproduced above, precludes any possibility of pronouncing any ruling in the present proceedings, where the act of import stands concluded. Besides, it also appears that the **relevant imports have been subjected to provisional assessment**. It is clear from a plain reading of section 2{2} of the Act that assessment includes provisional assessment and since the questions involved in the present proceedings are already pending in the applicant's case before an officer of customs, the proviso {a} to sub-section 2 of section 28-1 of the Act does not allow me to pronounce any advance ruling as requested. It is settled law that assessment



is a quasi-judicial proceeding requiring application of mind and speaking decisions
[L&T_26.04.2021_CAAR Mumbai_Para 4]

(ii) "13.6 On the basis of the careful examination of the relevant provisions Rules and CAAR Regulations, 2021, I am on the considered view that an application may be considered "pending" before any officer of customs only if it is pending before an officer in formal manner before an officer who is competent to answer the said question in terms of specific powers vested with the officer under the Customs Act 1962. An illustrative list of such situations would include cases wherein a Show Cause Notice has been issued; bill of entry has been provisionally assessed under Section 18 of the Act ibid; the matter is pending before the Special Valuation Branch of the Customs Commissioner for the purpose of valuation of the goods in question; or the proper officer has held the pre-notice consultation with the applicant in terms of the proviso of subsection (a) of Section 28(1) of the Customs Act, 1962." [HQ Lamps_08.08.2022_CAAR Delhi_Para 13.6]

10. I find that the matter of import of copper Tubes under benefit of Asian-India Free Trade Agreement (AIFTA) is under ongoing investigation and as well as under provisional assessment of Bills of Entry of such kind of imports. In my opinion, the instant matter does not appear to be maintainable and the instant application appears liable for rejection under clause 2(a) of Section 28(i) of Customs Act, 1962.

11. Accordingly, in light of the discussions in the preceding paragraphs, without going into the merit of the application, I order for rejection of the application for Advance Ruling in respect of application No. 37/2023-Delhi dated 12.01.2024.



(SAMAR NANDA)

Customs Authority for Advance Rulings
New Delhi



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

1. M/s LS Metal Vina LLC, Land plot CN111, Deep C 2B industrial zone, Dinh vu – Cat Hai Economic zone, Dong Hai 2 ward, Hai An district, Hai phong city, Vietnam
2. Commissioner of Customs, ICD, Patpartganj, Delhi.
3. The Customs Authority for Advance Rulings, Mumbai, New Custom House, Ballard Estate, Mumbai-400001
4. The Chief Commissioner (AR), Customs Excise & Service Tax Appellate Tribunal (CESTAT), West Block-2, Wing-2, R.K. Puram, New Delhi-110066
5. The Chief Commissioner of Customs, Delhi Customs Zone, New Custom House, IGI Airport Complex, New Delhi-110037
6. Guard file
7. Webmaster.

LSM
01.04.2024

(Anamika Singh)
Secretary,
Customs Authority for Advance Rulings,
New Delhi

