

CAAR/Mum/ARC/61/2024



सीमाशुल्क अग्रिम विनिर्णय प्राधिकरण  
CUSTOMS AUTHORITY FOR ADVANCE RULINGS  
नवीन सीमाशुल्क भवन, बेलाई इस्टेट, मुंबई - ४०० ००१  
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The 23<sup>rd</sup> day of April, 2024

Ruling Nos. CAAR/Mum/ARC/61/2024

In

Application No. CAAR/CUS/APPL/77/2023 - O/o Commr-CAAR-MUMBAI

Name and address of the applicant: M/s Larsen & Toubro Limited, L&T House, Ballard Estate, Mumbai-400001, Maharashtra.

Commissioner concerned: The Commissioner of Customs, JNCH, NS-III, Tal-Uran, Raigad, Mumbai-400707

Present for the applicant: Sh. Sivarajan (PWC), Sh. S. Mahalingam, Head Exim (L&T), Sh. Anuj Patel, PWC and Shri. Ketan Bindra, PWC

Present for the Department: None

### Ruling

M/s Larsen & Toubro Limited (IEC No.: 0388024011) (Hereinafter referred to as 'Applicant') filed an application for advance ruling in the Office of Secretary, Customs Authority for Advance Ruling, Mumbai. The said application was received in the secretariat of the CAAR, Mumbai on **23.06.2023**, along with its enclosures in terms of Section 28H (I) of the Customs Act, 1962 (hereinafter referred to as the 'Act'). The applicant is seeking advance ruling on the classification of 'Bronze Cladding Panels (BCP)' (hereinafter referred to as 'subject goods').

### **2. Submission by the Applicant:**

2.1 The Applicant is engaged in the business of Engineering, Procurement, and Construction ('EPC') whereby it acts as an EPC contractor and executes various projects pursuant to arrangements with public and private sector undertakings, local bodies as well as the State and Union government(s).



**2.2** The Applicant has been appointed as an EPC contractor for the construction of 108 feet tall statue of Shree Adi Shankaracharya called as the 'Statue of Oneness' at Omkareshwar in Madhya Pradesh. The contract for the same is awarded by Madhya Pradesh State Tourism Development Corporation Limited ('MPSTDCL') for an amount of INR 158.5 crores approx. The copy of the contract awarded by MPSTDCL and the letter of acceptance are enclosed as Exhibit 1 and Exhibit 2 to the CAAR-1 application respectively.

**2.3** Statue of Oneness is a towering monument of spiritual enlightenment. It will rest atop a 54ft pedestal (made up of concrete cement) supported by a 27-ft lotus petal base, creating an impressive sight to behold. The statue will comprise of a base structure, and including potli (stick), kamandal and rudraksh mala made of steel with an outer surface of bronze.

**2.4** Given that creation of a grand statue involves a multitude of steps that require precision, creativity and expertise, and various stages of fabrication and construction - the Statue of Oneness is expected to be a prime example of such a statue serving as an engineering marvel from the preparation of the sketch to the casting process, the making of the statue involves an elaborate process that requires the collaboration of skilled professionals.

**2.5** From a process flow perspective, the design of the Statue of Oneness was initially prepared in the form of sketch by Shri Vasudeo Kamath, post this a sculpture of 3/6 feet tall as well as 11 feet tall were prepared by Shri Bhagwan Rampure who was the sculptor appointed for the project in India under the guidance of Shri Vasudeo Kamath. These sculptures are essentially the works of art prepared by the aforementioned artists for the purpose of designing and conceptualizing the final version of the complete statue and does not have any other utility (reference photos have been attached as Exhibit 3 to CAAR-1 application).

**2.6** Further, using computer modelling techniques, the entire design of the statute is digitized and optimized, which helps in ensuring the design philosophy and structural integrity of the statue, and ensures that it meets all required specifications.

**2.7** The Applicant has entered into contract with M/s Jiangxi Toqine Metal Crafts Corporation Limited incorporated in China ('Vendor') for supply of BCP as well as [skeletal] steel structures including related accessories. The CIF value of the import of BCP is approx. INR 22.70 crores whereas the CIF import value for steel structures is approx. INR 14.77 crores.

**2.8** Based on the computer design provided by the Applicant, the appointed Vendor prepares (i) a foam model with the help of scan data, (ii) thereafter sand moulds are prepared for casting of micro panels/ BCP for separate areas of the façade of the statue, (iii) these bronze panels so created (for such separate areas of the facade) are then cut and shipped to India in the form of (a total of approx. 290 sheets. It is pertinent to note that the item imported by the Applicant is merely bronze sheet/micro panel. It is not the situation where a complete statue has been prepared and thereafter disassembled only for the purpose of shipping and import into India. In fact, substantial activities will be undertaken in India for construction of the eventual statue. The illustrative image of the bronze sheets i.e. BCP proposed to be imported by the Applicant are attached as Exhibit 4 to the CAAR-1 application. The aforesaid





bronze sheets and structural steel items will then be used by the Applicant in fabrication and construction of the entire statue; the process carried out by the Applicant for construction of the statue as a whole in India is explained as under:

- i. Civil foundation – Preparation of civil foundation will involve excavation, building foundation from steel, curing of concrete etc.
- ii. Carving of stone lotus petals – This involves roughing of the stones, shaping the stones using multiple instruments and providing finishing for smooth surfaces
- iii. Erection of steel super structures on the foundation and lotus – This involves cutting, fixing, welding, painting and erection of the steel structures into primary and secondary trusses so as to construct the inner skeletal structure of the statue which gives it strength and structural integrity and essential formative character.
- iv. Assembly of BCP – The structure created through erection of structural steel and concrete will be mounted with the BCP imported by the Applicant. The BCP will be affixed and welded in such a manner that they have winces and hydraulically operated openable cables for external maintenance and cleaning.
- v. Painting and finishing – The final step of the construction of Statue of Oneness would involve finishing, polishing, painting to give the statue the desired aesthetic look. The BCP would be Polyurethane ('PU') painted with warranty to protect them from oxidation and patina effect for minimum 10 years.

The structure due to its massive size and design of the statue, it will have a proper drainage system to avoid any accumulation of water.

2.9 The aforesaid construction processes will involve extensive skilled labor force, engineers and craftsmen and would also involve use of various heavy weight machinery/cranes for lifting, fixing, welding etc. considering the size of the structure/statue and will be undertaken over a period of approx. 15 months.

2.10 As mentioned above, Applicant is proposing to import BCP in the form of bronze sheets from the Vendor which will be subject to further processing and work (described above) in India to construct the Statue of Oneness. The Applicant confirms that no import of BCP for the Statute of Oneness has occurred as on the date of filing this application. Given the nature, form and shape of the item imported i.e., bronze sheets, the Applicant has made this advance ruling application to determine the appropriate classification and tariff entry. The list of competing tariff entries have been tabulated below (technical analysis has been provided in Annexure II):



Sr. No	HSN code	Description
1	74	<b>Base metals and articles of base metal</b>
	7409	Copper plates, sheets and strip, of a thickness exceeding 0.15mm
	74093900	Other
2	97	<b>Works of art, collectors' pieces and antiques</b>
	9703	Original sculpture and statuary, in any material
	97039010	Of metal
3	83	<b>Miscellaneous articles of base metal</b>
	8306	Statuettes and other ornaments of base metal
	83062110	Statuettes

2.11 In view of the above, present application is being preferred before the Customs Authority for Advance Ruling to seek:

“Whether Bronze Cladding Panels (BCP) to be imported should be classified under the tariff entry 74093900 or 97039010 or 83062110 of the Custom Tariff Act, 1975”

### 3. Applicant's Interpretation of Law:

3.1 As discussed above, the Applicant in the present case will import BCP that will be used for construction, fabrication and commissioning of the Statue of Oneness. The statue will have a base of 54 feet pedestal supported by 27 feet lotus petal base carved out of stone, the BCP imported will be affixed, assembled onto the steel super structures that will be cut, fixed and welded to form the base skeletal structure of the statue, which will then be further subjected to painting and finishing. In simple terms, the BCP imported by the Applicant are merely formed/ shaped bronze sheets that amongst other items be used in the construction of the statue.

3.2 Rule 1 of the General Rules for the Interpretation of Import Tariff ('GRI') provides that, classification of goods shall be determined according to the terms of the headings and any relative Section or Chapter Notes. If such headings or notes do not otherwise require, then the classification is to be determined in accordance with the other rules of GRI.

3.3 Given the composition, usage, shape and form in which BCP will be imported, the Applicant believes that BCP imported should be classifiable under Chapter heading 7409. The relevant extract of the same is reproduced as under:





Sr. No	HSN code	Description
1	74	Base metals and articles of base metal
	7409	Copper plates, sheets and strip, of a thickness exceeding 0.15mm
	74093900	Other

3.4 Chapter heading 7409 covers copper plates, sheets and strip, of a thickness exceeding 0.15 mm made out of copper-tin base alloys i.e., bronze.

3.5 Section note 9 (d) to Chapter 74 defines plates, sheets, strip and foil as under:

*“Flat-surfaced products (other than the unwrought products), coiled or not, of solid rectangular (other than square) cross-section with or without rounded corners (including “modified rectangles” of which two opposite sides are convex arcs, the other two sides being straight, of equal length and parallel) of a uniform thickness, which are:*

*- of rectangular (including square) shape with a thickness not exceeding one-tenth of the width;*

*- of a shape other than rectangular or square, of any size, provided that they do not assume the character of articles or products of other headings.”*

3.6 On perusal of the above, it can be understood that bronze sheets (copper alloys) exceeding 0.15 mm irrespective of its shape and size are covered under Chapter heading 7409. The said heading further excludes bronze sheets only where such sheets assume the character of articles or products under other headings.

3.7 Further, Chapter note to Chapter 74 specifically excludes articles of Chapter 97 (work of arts). Thus, it is imperative to analyze whether the bronze sheets imported can be said to have assumed the characteristics of articles or product covered under other headings. The relevant heading for consideration in this regard is Chapter heading 9703 which covers original sculptures and statuary.

Sr. No	HSN code	Description
1	97	Works of art, collectors' pieces and antiques
	9703	Original sculpture and statuary, in any material
	97039010	Of metal



**3.8** Chapter heading 9703 covers original sculptures and statuary made out of stone, terracotta, wood, ivory, metal, wax, etc., whether modern or ancient.

**3.9** The WCO explanatory notes to Chapter heading 9703 provides that *“This heading covers original sculptures and statuary, ancient or modern. They may be in any material (stone, reconstituted stone, terra-cotta, wood, ivory, metal, wax, etc.) in the round, in relief or intaglio (statute, busts, figurines, groups, representations of animals, etc, including reliefs for architectural purposes).”*

**3.10** Further, WCO explanatory notes defines the broad process used in creation of statue by an artist, which reads as under:

*“These works may be produced by various processes including the following: in one of these the artist craves the work directly from hard materials; in another the artist models soft materials into figures; these are then cast in bronze or in plaster, or are fired or otherwise hardened, or they may be reproduced by the artist in marble or in other hard material.”*

*“He begins by roughing out his idea as a model, also known as a maquette, (usually on a reduced scale) in clay or other plastic material; with this as a basis, he then models a “clay form”. ..... used either as a model for the execution of the work in stone or wood, or for preparing moulds for casting in metal or wax.”*

**3.11** Upon perusal of the above, it can be understood that Chapter heading 9703 includes sculptures or the original models prepared by an artist as well as copies of those models prepared by the secondary process by the same or any other artist. Thus, the essential qualification criteria for classification under Chapter heading 9703, the item under consideration should be a creation or work of art by an artist. In the instant case, the sketch preparer (i.e. Shri Vasudeo Kamath) as well as the sculptor (i.e. Shri Bhagwan Rampure) based out of India are in true sense the artist who have created or carved out the original model of the statue.

**3.12** Based on the original works of the sculptor and using the modern 3D technology, the Applicant had placed a purchase order on the Vendor to supply the bronze panels, structural steels including related accessories as per required specifications so that the same can be used by the Applicant in the fabrication and construction of the entire statue. Hence, the form in which the import occurs (illustrative images enclosed as Exhibit 4) and is presented has not [yet] achieved or assumed the character of the work of art so as to be excluded from Chapter 74 vide Section note 9 (d).

**3.13** Given that the product under consideration i.e., BCP is primarily outer layer of the entire statue that will be affixed through complex work process of assembly, welding and painting with the super steel structure and erected on the concrete base to achieve the complete form of a statue; the mere supply of the BCP by the Vendor cannot be equated with the original work of an artist so as to classify under Chapter heading 9703.





**3.14** Additionally, Chapter heading 9703 is intended to cover “sculpture or statuary”. The word sculpture has not been defined in Chapter heading 9703. It is established principle that where a term is not defined under statute, then reference can be made to dictionary meanings, reliance is hereby placed on the following judgements in this context:

- Wockhardt Life Sciences Ltd., 2012 (277) E.L. T. 299 (S.C.)
- Surendra Cotton Oil Mills & Fert., Co 2001 (127) E.L.T. 3 (S.C.)
- Ashoka Foods Ltd., 1989 (42) E.L.T. 409 (Tribunal)

**3.15** Applying the above principle in the present context, reliance is hereby placed on the following dictionary meanings:

Dictionary	Meaning
Collins’s dictionary	<i>A sculpture is a work of art that is produced by carving or shaping stone, wood, clay, or other materials<sup>1</sup></i>
Merriam webster	<i>The action or art of processing (as by carving, modeling, or welding) plastic or hard materials into works of art<sup>2</sup></i>
Cambridge dictionary	<i>The art of forming solid objects that represent a thing, person, idea, etc. out of a material such as wood, clay, metal, or stone, or an object made in this way<sup>3</sup></i>

On reading of the above definition, it can be construed that sculpture or statuary is a free-standing statue in which the realistic, full-length figures of persons or animals are carved or cast in a durable material such as wood, metal, or stone. In other words, Chapter heading 9703 essentially applies to a statue as a work of an artist on sculpture which is at, or near to, completion stage.

**3.16** In the present case, the Applicant is also importing varied items such as steel structures, BCP as bronze sheets other accessories. It is submitted that the steel structure will be affixed to the concrete and stone base and thereafter the skeletal support structure from steel will be built. The BCP will be assembled as the outer layer of the statute which will be affixed through complex assembly and subsequent work processes to the steel structure achieve the complete form of a statue which has already been explained above in para no 1.9.

**3.17** It is submitted that these imported items will be subjected to further processing which primarily includes cutting, welding and affixing to the concrete structure through complex engineering processes. The Applicant has classified the steel imported under the specific tariff entry 73089090 owing the special characteristics. Notably, the principle adopted for the classification of steel should equally apply to the facts of BCP inasmuch as BCP imported are

<sup>1</sup> <https://www.collinsdictionary.com/dictionary/english/sculpture>

<sup>2</sup> <https://www.merriam-webster.com/dictionary/sculpture>

<sup>3</sup> <https://dictionary.cambridge.org/dictionary/english/sculpture>



also subjected to further processing in India. Therefore, BCP imported shall merit classification under the tariff entry 74093900.

**Non-applicability of Rule 2(a) of GRI for classification of BCP**

**3.18** It is submitted that Rule 2(a) of GRI provides that any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

Rule 2(a) of GRI reads as follows:

*“Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.”*

**3.19** It has already been submitted that the Applicant will be importing BCP and steel structures for construction of statue. The BCP imported does not in any manner represent or has the essential characteristics of a statue either in an unassembled or incomplete form. To construct the Statue of Oneness, a substantial set of activities (such as civil works, foundation base, cutting and fixing of steel structures, welding of BCP and affixation on steel structures, painting, finishing work, etc.) as discussed in para 1.9 will be required to be undertaken by the Applicant in India. Accordingly, Rule 2(a) of GRI should not be applicable to the facts of the current case to invoke Chapter heading 9703 by treating BCP imported as a part of incomplete an unfinished statue.

**3.20** The Applicant further submits to execute the overall contract provided by MPSTDCL for the construction of Statue of Oneness which involves various cost components including but not limited to structural steel, plant and machinery, stone works, Mechanical Electrical and Plumbing (‘MEP’) works, concrete/ reinforcement works, etc. BCP as a cost component is approx. 26% of the overall project cost (infact the civil and BCP components for the project are almost equivalent). Thus, even in monetary terms BCP does not represent a significant proportion of the cost of the project. Thus, it is hereby submitted that import of BCP cannot be construed and equated with an unfinished or unassembled or incomplete statue by application of Rule 2(a) of GRI.





**3.21** In this regard, reference can also be made to the decision in case of **New Century Impex versus Commissioner of Customs, Nhava Sheva**<sup>4</sup> by the Hon'ble New Delhi Tribunal wherein it was held that the fact that 60% to 70% of the components in terms of value were imported and the rest 30% were domestically procured, the item imported does not represent or possesses the essential characteristics of a complete photocopy machine.

**3.22** Similar principle was held in the case of **Bhagwan Electro Photocopiers**<sup>5</sup>, wherein the Tribunal held that *"The mere fact that the items imported were main parts of a photocopier machine, the same cannot be called an entire photocopier machine."*

**3.23** The principle laid down in the above judgements is squarely applicable to the import of BCP considering the composition thereof in the overall cost of the project. Accordingly, BCP imported cannot be treated as incomplete or unfinished statue in terms of Rule 2(a) of GRI.

**3.24** Without prejudice to the above, the Applicant further submits that the explanatory notes to Rule 2(a) GRI provides that articles presented unassembled or disassembled means articles the components of which are to be assembled either by means of fixing devices (screws, nuts, bolts etc.) or by riveting or welding, for example, provided only assembly operations are involved. While the explanatory notes provide that no account is to be taken with regard to the complexity of the assembly method; the essential test is that the components or items imported should not be subjected to any further working operation for completion into the finished state. The relevant extract is reproduced as under:

*"For the purpose of this Rule, "articles presented unassembled or disassembled" means articles the components of which are to be assembled either by means of fixing devices (screws, nuts, bolts etc.) or by riveting or welding, for example, provided only assembly operations are involved.*

*No account is to be taken in that regard of the complexity of the assembly method. However, the components shall not be subjected to any further working operation for completion into the finished state."*

**3.25** As explained above, to construct the complete Statue of Oneness, various activities in terms of preparation of concrete surface, assembly with structural steel frames through welding, painting, finishing, etc. by deploying skilled workforce, heavy machineries, cranes, etc. will be required to undertaken over 3-4 months (excluding the foundational civil structure). Thus, it is abundantly clear that Rule 2(a) of GRI is not applicable in the current scenario and accordingly BCP imported are rightly classifiable under Chapter heading 7409

<sup>4</sup> 2002 (3) TMI 337 - CEGAT, NEW DELHI

<sup>5</sup> 1998(12) TMI 159 - CEGAT, NEW DELHI



as bronze sheet and cannot by any stretch of imagination be classified under Chapter heading 9703 as sculpture or statue.

**3.26** Reliance in this regard is placed on the judgement in case of *Commissioner of Customs, New Delhi versus Sony India Ltd*<sup>6</sup> wherein the Supreme Court has held that the components being imported should not be subject to further processing for the applicability of Rule 2(a) of GRI. The relevant extract of the judgement is reproduced below:

*“...to the conclusion that in view of Section Note 2 to Section XVI Rule 2(a) would not apply and confirmed the import of goods as components. While interpreting Explanatory Note to Rule 2(a), the Tribunal had held that this Rule would apply only when the imported articles presented in unassembled or disassembled can be put together by means of simple fixing device or riveting or welding”*

**3.27** Further, it is submitted that the classification of the product shall be determined as per the actual condition of import and not based on the anticipated future use. In the regard, reliance is placed in case of *M/s CS India Steel Private Limited*<sup>7</sup>, wherein it was established that it is not permissible to ignore the actual condition of the goods cleared and assess them on the basis of anticipated future use. Additionally, it was pointed out that when an appropriate heading for the goods themselves is available in the tariff, the question of invoking Rule 2 or other subsequent Rules to search for some other appropriate heading, does not arise.

**3.28** The ratio of the above judgment is clearly applicable to the present case, inasmuch as the Applicant is importing BCP which will be used for the construction of statute. It is clearly evident from the illustrative images of BCP attached as **Exhibit 4**, that the actual condition of the item at the point of import is merely bronze sheet. Therefore, it is submitted that the classification of BCP shall be as per the tariff heading which are applicable to the condition in which goods are imported i.e. Chapter heading 7409 and subsequent use of the product will not be decisive factor to determine the classification.

**3.29** Moreover, in case of *Jagriti Industries*<sup>8</sup> wherein it was held that castings cannot be said to have assumed the form of machine parts by their design, shape, form as per Rule 2(a) of GRI. They will remain classifiable under specific heading as castings and will not be classified as machine parts unless and until these have been machined.

**3.30** Similar matter was dealt in the case of *Shivaji Works Limited*<sup>9</sup> wherein the Tribunal held that “Rule 2(a) does not permit us to conclude that when an article squarely falls under a particular Tariff Heading it can be made to fall under another Heading by invoking the concept of essential character. This is against the plain reading of Rule 2(a). But this is precisely what is attempted to be done by the lower authorities in the impugned order. It is

<sup>6</sup> 2008 (9) TMI 19 – Supreme Court

<sup>7</sup> 2009 (2) TMI 25 – AAR Karnataka

<sup>8</sup> 2004 (2) TMI 128 – CESTAT

<sup>9</sup> 1993 (5) TMI 98 – CEGAT, NEW DELHI





*not denied that 'casting' of iron and steel do fall under Heading 73.25, but because the castings have the 'essential character' of products under Chapters 84, 85 or 87, such 'castings' should be deprived of their most appropriate and only classification. Such an interpretation of Rule 2(a) is untenable. It will create clashes within different headings and disturb their harmony."*

**3.31** Given the above factual and technical submissions, the BCP imported by the Applicant being bronze sheets to be used for construction of the statue would merit classification under tariff entry 74093900 and cannot be classified as sculpture or statue under tariff entry 97039010 by invoking Rule 2(a) of GRI.

**3.32 Classification under tariff entry 83062110:** As submitted above, the Applicant had also similar imported BCP for execution of Statue of Unity project and had classified the same under tariff entry 83062110 as 'Statuettes' in the past.

**3.33** It is submitted that WCO notes provide the characteristics for the classification of the goods falling under Chapter heading 8306. The key characteristics of goods classifiable under the aforesaid heading include statuettes and other ornaments plated with precious metal. According to the explanatory notes, the group covers articles which have no utility value but are wholly ornamental, and articles whose only usefulness is to contain or support other decorative articles or to add to their decorative effect, for example ornaments (including those forming parts of clock sets) for mantelpieces, shelves, etc., sporting or art trophies, wall ornaments incorporating fittings for hanging, artificial flowers etc. The relevant extract of the explanatory notes has been enclosed as Exhibit 10 to the CAAR-1 application.

**3.34** It can be construed from the explanation above, that goods which are smaller in size or give a decorative / souvenir effect should fall under the Chapter heading 8306. The term "Statuettes" has not been provided under the section notes, chapter notes and said explanatory notes. Therefore, reliance is placed on the various definition for the word "statuettes" which are as under (refer para 4.2.14 wherein the Applicant has discussed the relevance of recourse to dictionary meaning):

Dictionary	Meaning
Collins's dictionary	<i>A statuette is a very small sculpture of a person or an animal which is often displayed on a shelf or stand<sup>10</sup></i>
Merriam webster	<i>A small statue<sup>11</sup></i>
Cambridge dictionary	<i>A statue that is small enough to stand on a table or shelf<sup>12</sup></i>

<sup>10</sup> <https://www.collinsdictionary.com/dictionary/english/statuette>

<sup>11</sup> <https://www.merriam-webster.com/dictionary/statuette>

<sup>12</sup> <https://dictionary.cambridge.org/dictionary/english/statuette>



**3.35** On perusal of the above definitions, it is evident that statuettes are generally smaller in size and used for decorative purposes. Even though the explanatory notes do not provide for any specific explanation/restrictions in terms of size or height of the item which shall be classifiable as statuettes; based on a dictionary meaning, it can be reasonably concluded that the term 'statuettes' itself denotes smaller statues for decorative purposes.

**3.36** From the factual aspect discussed above, it is clear that Statue of Oneness to be created by Applicant for which the BCP are being imported, is 108 feet, and hence it clearly should not be classifiable as a "Statuette" as provided under Chapter heading 8306 and not merit classification under tariff entry 83062110. Further, the form in which the BCP is imported as can be understood from the illustrative images enclosed as Exhibit 4 to the CAAR-1 application, it is evidently clear that it is not a situation where a complete statue is imported (whether in an assembled or disassembled form).

**3.37** Without prejudice to our above submission that statuettes covers small decorative items and not large statue as the one under consideration; qualification under Chapter heading 8306 would only merit deliberation upon application of Rule 2(a) of GRI. As already discussed above, Rule 2(a) will not have any application as the items imported do not have an essential characteristic of a finished product (statuettes in the current situation).

**3.38** Further, it has already been discussed in the ruling of *M/s CS India Steel Private Limited* that classification should be determined based on the actual condition of the goods at the point of assessment and not based on the anticipated future use. Thus, BCP imported for construction of Statue of Oneness should not be classified under tariff entry 83062110 as Statuettes.

**3.39** In the light of the above, the applicant has sought Ruling from the Authority as below: *"Whether Bronze Cladding Panels (BCP) to be imported should be classified under the tariff entry 74093900 or 97039010 or 83062110 of the Custom Tariff Act, 1975"*

#### **4. Port of Import and reply from jurisdictional Commissionerate:**

**4.1** The applicant in their CAAR-1 indicated that they intend to import the subject goods from the O/o Commissioner of Customs, JNCH, NS-III, Tal-Uran, Raigad, Mumbai-400707. The application was forwarded to the jurisdictional Commissioner of Customs for their comments vide this office letters dated 17.07.2023, 24.08.2023 & 01.11.2023. A letter dated 14.03.2024 has been received from DC/ Gr. V, NS-V wherein the details of the case has been forwarded to DC/Gr.VI, NS-V however subsequently no specific comments have been received with regard to the classification of '*Bronze Cladding Panels (BCP)*'.

#### **5. Details of Personal Hearing:**

**5.1** A personal hearing was held on 06.02.2024 at 12:30 PM. Sh. Sivarajan (PWC), Sh. S. Mahalingam, Head Exim (L&T), Sh. Anuj Patel, PWC and Shri. Ketan Bindra, PWC





appeared on behalf of the applicant for the hearing. During the PH, the representatives of the applicant reiterated the content of written submission made before this office. Further, they informed that it is an identical import of the components as imported in the case of 'Statue of Unity'. They submitted that in the case of import of components in the matter of Statue of Unity Hon'ble CESTAT after considering the facts and circumstances of that case upheld its classification under CTH 83062110 as per the contention of the applicant without going into the merit of the case, however they contended that there may be 3 different competing heading of the subject imported goods under chapter 74, 97 or 83 but argued that the chapter 97 and 83 are not relevant in this case and the subject goods merit classification under CTI 74093900. They further argued that GIR 2(a) is not applicable for interpretation of the said goods in as much as these are neither incomplete nor unfinished goods nor presented as in unassembled or disassembled form. They further contended that the subject goods are in complete form not elsewhere classifiable, at the same time GIR 2(a) cannot be applied to the said goods. They informed to file additional submission in the matter within 2 weeks' time and that was permitted. Nobody appeared from the department side to represent their case.

**5.2** Another personal hearing was held on 12.03.2024 at 3:00 PM. Sh. Sivarajan (PWC), Sh. S. Mahalingam, Head Exim (L&T), Sh. B. Prakash appeared on behalf of the applicant for the hearing. The representative pleaded that the subject goods merit classification under Heading 7409 and more particularly under tariff entry 74093900 (other). They however agreed to clarify that whether the subject goods are a part of computer aided design of a broader statue of Shree Adi Shankaracharya. Meanwhile during pending application, the goods were already imported and the subject B/E was provisionally assessed. The photographs of the subject goods were sought from the applicant which was submitted by them to this office. The photographs were examined. On being specifically asked that these photograph appeared to have certain shapes and designs they contended that they are sheets itself and are serially numbered. On being asked whether 290 such pieces of subject imported goods could be assembled at random basis they affirmed in negative. As against the additional submission (filed online on 27/02/2024), the department sought some time to submit the rebuttal which was granted. The applicants are also given time to submit the rebuttal if any.

**5.3** The applicant has submitted additional submissions dated 27.02.2024 and 08.04.2024 to further substantiate their point. The same have been taken on record.





The image of the Bronze Cladding Panels (BCP) which was provided by the applicants along with the construction site of 'Statue of oneness' is produced as below;



**Image 1:** Bronze Cladding Panels (BCP)



## Right Hand Erection

**Image 2**







**Bronze Panel Feet Erection**

**Image 3**



**Bronze Panel Head Erection**

**Image 4**



**Bronze Panel Face Erection**

**Image 5**

6. I have considered all the materials placed before me in respect of the subject goods. I have gone through the submissions made by the applicant during the personal hearing. Therefore, I proceed to pronounce a ruling on the basis of information available on record as well as existing legal framework. The issue before me is the classification of 'Bronze Cladding Panels (BCP)'.

7. Before deciding on the issue, let me deliberate on the legal framework prescribed in Customs Tariff Act, 1975, Chapter/ Section notes along with HSN explanatory notes, Relevant portion of Customs tariff is reproduced here for ease of reference:

### 7.1 **CTH 7409:**

7409	COPPER PLATES, SHEETS AND STRIP, OF A THICKNESS EXCEEDING 0.12.5 MM			
	- <i>Of refined copper :</i>			
7409 11 00	-- In coils	kg.	5%	-
7409 19 00	-- Other	kg.	5%	-
	- <i>Of copper-zinc base alloys (brass) :</i>			
7409 21 00	-- In coils	kg.	5%	-
7409 29 00	-- Other	kg.	5%	-
	- <i>Of copper-tin base alloys (bronze) :</i>			
7409 31 00	-- In coils	kg.	5%	-
7409 39 00	-- Other	kg.	5%	-
7409 40 00	- Of copper-nickel base alloys (cupro-nickel) or copper-nickel-zinc base alloys (nickel silver)	kg.	5%	-
7409 90 00	- Of other copper alloys	kg.	5%	-

The heading covers copper plates, sheets and strip, of a thickness exceeding 0.15mm.

Section note 9 (d) to SECTION XV defines plates, sheets, strip and foil as under

*(d) Plates, sheets, strip and foil*

**Flat-surfaced products** (other than the unwrought products of heading 8001), coiled or not, of solid rectangular (other than square) cross-section with or without rounded corners (including "modified rectangles" of which two opposite sides are convex arcs, the other two sides being straight, of equal length and parallel) of a uniform thickness, which are:

-of rectangular (including square) shape with a thickness not exceeding one-tenth of the width;

-of a shape other than rectangular or square, of any size, **provided that they do not assume the character of articles or products of other headings.**

Headings for plates, sheets, strip, and foil apply, *inter alia*, to plates, sheets, strip, and foil with patterns (for example, grooves, ribs, chequers, tears, buttons, lozenges) and to such products which have been perforated, corrugated, polished or coated, **provided that they do not thereby assume the character of articles or products of other headings.**





The relevant portion of the HSN explanatory notes is also reproduced for ease of reference:

*This heading covers the products defined in Note 9 (d) to Section XV when of a thickness exceeding 0.15 mm.*

*Plates and sheets are usually obtained by the hot- or cold-rolling of certain products of heading 7403; copper strip may be rolled, or obtained by slitting sheets.*

*All such goods remain in the heading if worked (e.g., cut to shape, perforated, corrugated, ribbed, channeled, polished, coated, embossed or rounded at the edges) provided they **do not thereby assume the character of articles or of products of other headings** (see Note 9 (d) to Section XV).*

*The limiting thickness of 0.15 mm includes coatings of varnish, etc.*

**7.1.1** The applicant in its application has stated that Chapter note to Chapter 74 specifically excludes articles of Chapter 97 (work of arts). However, on perusal no such Chapter Notes to the Chapter 74 where such exclusion is provided was found. However, vide Section 1(n) to SECTION XV articles of Chapter 97 (for example, works of art) have been excluded.

**7.1.2** I find that the subject goods have been made through Computer Aided Design and necessary bends and curves in the subject goods (as clearly visible from the image provided) have already been incorporated in the goods prior to its import and therefore the subject goods i.e. **Bronze Cladding Panel (BCP) can not be said to be having flat surface** with the shape of rectangle or square in accordance with the Section Note 9(d) to the Section XV. It appears that they already assume the character of articles or products of other headings. Therefore, the subject goods appear to be excluded from the scope of Chapter 74 as per Section Note 9(d) to the Section XV.

**7.2 CTH 8306:**

(1)	(2)	(3)	(4)	(5)
8306	BELLS, GONGS AND THE LIKE, NON-ELECTRIC, OF BASE METAL; STATUETTES AND OTHER ORNAMENTS, OF BASE METAL; PHOTOGRAPH, PICTURE OR SIMILAR FRAMES, OF BASE METAL; MIRRORS OF BASE METAL			
8306 10 00	- Bells, gongs and the like	kg.	20%	-
	- Statuettes and other ornaments:			
8306 21	-- Plated with precious metal:			
8306 21 10	--- Statuettes	kg.	20%	-
8306 21 20	--- Trophies	kg.	20%	-
8306 21 90	--- Other	kg.	20%	-
8306 29	-- Other:			
8306 29 10	--- Statuettes	kg.	20%	-
8306 29 20	--- Trophies	kg.	20%	-
8306 29 90	--- Other	kg.	20%	-
8306 30 00	- Photograph, picture or similar frames; mirrors	kg.	20%	-

The relevant portion of the HSN explanatory notes is also reproduced for ease of reference:



**(B) STATUETTES AND OTHER ORNAMENTS**

*This group comprises a wide range of ornaments of base metal (whether or not incorporating subsidiary non-metallic parts) of a kind designed essentially for decoration, e.g., in homes, Offices, assembly rooms, places of religious worship, gardens.*

*It should be noted that the group **does not include** articles of more specific headings of the Nomenclature, even if those articles are suited by their nature or finish as ornaments.*

*The group covers articles which have no utility value but are wholly ornamental, and articles whose only usefulness is to contain or support other decorative articles or to add to their decorative effect, for example:*

- (1) Busts, statuettes and other decorative figures; ornaments (including those forming parts of clock sets) for mantelpieces, shelves, etc. (animals, symbolic or allegorical figures, etc.); sporting or art trophies (cups, etc.); wall ornaments incorporating fittings for hanging (plaques, trays, plates, medallions other than those for personal adornment); artificial flowers, rosettes and similar ornamental goods of cast or forged metal (usually of wrought iron); knick-knacks for shelves or domestic display cabinets.*
- (2) Articles for religious use such as reliquaries, chalices, ciboriums, monstrances or Crucifixes.*
- (3) Table-bowls, vases, pots, jardinières (including those of cloisonne enamel).*

**7.2.1** From the explanation above, that goods which are **smaller** in size or give a decorative / souvenir effect should fall under the Chapter heading 8306. The term “Statuettes” has not been provided under the section notes, chapter notes and said explanatory notes. I also find that a ‘statuette’ is a very **small** sculpture of a person or an animal which is often displayed on a shelf or stand. It is evident that statuettes are generally smaller in size and used for decorative purposes. Even though the explanatory notes do not provide for any specific explanation/restrictions in terms of size or height of the item which shall be classifiable as statuettes; based on a dictionary meaning, it can be reasonably concluded that the term ‘statuettes’ itself denotes smaller statues for decorative purposes.

**7.3 CTH 9703:**

*9703		ORIGINAL SCULPTURE AND STATUARY, IN ANY MATERIAL		
9703 10	-	Of an age exceeding 100 years:		
9703 10 10	---	Of metal	u	10%
9703 10 20	---	Of stone	u	10%
9703 10 90	---	Other	u	10%
9703 90	-	Other:		
9703 90 10	---	Of metal	u	10%
9703 90 20	---	Of stone		
9703 90 90	---	Other	u	10%





The relevant portion of the HSN explanatory notes is also reproduced for ease of reference:

*This heading covers original sculptures and statuary, ancient or modern. They may be in any material (stone, reconstituted stone, terra-cotta, wood, ivory, metal, wax, etc.), in the round, in relief or in intaglio (statues, busts, figurines, groups, representations of animals, etc., including reliefs for architectural purposes).*

*These works may be produced by various processes including the following: in one of these the artist carves the work directly from hard materials; in another the artist models soft materials into figures; these are then cast in bronze or in plaster, or are fired or otherwise hardened, or they may be reproduced by the artist in marble or in other hard materials.*

*In the latter process, the artist usually proceeds on the following lines:*

*He begins by roughing out his idea as a model, also known as a maquette, (usually on a reduced scale) in clay or other plastic material; with this as a basis, he then models a "clay form". This "clay form" is seldom sold, but is usually destroyed after it has served for moulding a very limited number of copies decided in advance by the artist, or it is placed in a museum for study purposes. These reproductions include, firstly, the "plaster model" produced directly from the "clay form". This "plaster model" is used either as a model for the execution of the work in stone or wood, or for preparing moulds for casting in metal or wax.*

*The same sculpture may therefore be reproduced as two or three "copies" in marble, wood, wax, bronze, etc., and a few in terra-cotta or in plaster. Not only the preliminary model, but also the "clay form", the "plaster model" and these "copies" constitute original works of the artist; the copies are in fact never quite identical as the artist has intervened at each stage with additional modelling, corrections to casts, and for the patina imparted to each article. Only rarely does the total number of replicas exceed twelve.*

*The heading therefore covers not only the original models made by the sculptor but also copies and reproductions of those models made by the second process described above, whether these are made by the sculptor himself or by another artist.*

*The heading excludes the following articles, even if they are designed or created by artists:*

- (a) *Ornamental sculptures of a commercial character.*
- (b) *Articles of personal adornment and other works of conventional craftsmanship of a commercial character (ornaments, religious effigies, etc.).*
- (c) *Mass-produced reproductions in plaster, staff, cement, papier mache, etc.*



*With the exception of articles of adornment classifiable in heading 71.16 or 71.17, all these articles are classified according to their constituent material (heading 44.20 for wood, heading 68.02 or 68.15 for stone, heading 69.13 for ceramics, heading 83.06 for base metal, etc.).*

**7.3.1** Chapter 97 includes work of art and heading 9703 covers original sculpture and statuary, in any material. Before going into the classification the process of manufacturing, stages and development and method of the creation of the subject goods require to be discussed. As per Para 2.2 to 2.8 as above the illustration made by the applicant it is evident that the subject goods are a result of following process and procedure:

- i. The design of the statue of Shree Adi Shankaracharya also called as Statue of Oneness is initially prepared in the **form of Sketch**.
- ii. Post this a **sculpture** of 3/6 feet tall as well as 11 feet are prepared by the project sculptor essentially as **'Work of Art'**.
- iii. **Thereafter through Computer Modeling techniques, the entire design of the statue is digitized and optimized as per the requirement of Structural integrity of the statue.**
- iv. **Then a foam model is prepared with the help of scan data.**
- v. Thereafter **sand moulds** are prepared for **casting of micro panels/BCP** for separate areas of the façade of the statue/Bronze Panel.
- vi. Then the Bronze panel so created (for such separate areas of the façade) are then **cut** into 290 different pieces and shipped to India.
- vii. The imported 290 pieces of the moulds are to be mounted on a pre-fabricated structure on the site.
- viii. **Painting and finishing is done for designed aesthetic look, protect from oxidation etc.**
- ix. The subject imported goods does not have any other utility other than in assembling the same to complete the statue of Shree Adi Shankaracharya called as **'Statue of Oneness'**.

**7.3.2** On going through the above details and process involved, it is apparent that the subject goods are work of art under Chapter 97 and more particularly under Heading 9703 as a sculpture.

**7.3.3** It therefore appears that original sculpture and statuary in any material are covered under the scope of Chapter heading 9703 and more particularly under tariff entry 97039010 if they are made of metal and does not exceed the age of 100 years.

**8.1** Classification of imported goods is governed by the principles set forth in the General Rules of Interpretation (GRI). Rule 1 of GRI 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 other-wise require, according to the following provisions [that is, GRIs 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.

**8.2** As per Rule 2(a) *Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled.* The second part of GRI 2 (a) provides that complete or finished articles presented unassembled or disassembled (which may occur for reasons related to the packing, handling or transportation of the articles) are to be classified in the same heading as the assembled article. It also provides that incomplete or unfinished articles presented unassembled or disassembled are to be classified in the same heading as the complete or finished article provided that as presented they have the essential character of the complete or finished article (as provided for in the first part of GRI 2 (a)).

**8.3** However, the applicants have contended that in the tariff word sculpture has not been defined hence dictionary meaning can be referred. The CTH 9703 covers original sculpture and statuary in any material.

**8.3.1** As per Merriam Webster dictionary statuary means: 1: sculptor; 2a: the art of making statues; 2b: a collection of statues: statues.

**8.3.2** As per Cambridge dictionary sculpture means- “the art of forming solid objects that represents thing, person, idea, etc. out of a material such as wood, clay, metal, or stone or an object made in this way”

**8.3.3** Further, as per Oxford Learner’s Dictionary the sculpture is defined as: - a work of art that is a solid figure or object made by carving or shaping, stone, clay, metal etc.

**8.3.4** As per Britannica.com the word sculpture means **sculpture, an artistic form in which hard or plastic materials are worked into three-dimensional art objects. The designs may be embodied in freestanding objects, in reliefs on surfaces, or in environments ranging from tableaux to contexts that envelop the spectator. An enormous variety of media may be used, including clay, wax, stone, metal, fabric, glass, wood, plaster, rubber, and random “found” objects. Materials may be carved, modeled, molded, cast, wrought, welded, sewn, assembled, or otherwise shaped and combined.**

**8.4** In the present scenario, from the image of the BCP it is evident that they are not sheets or plate as claimed by the applicants in terms of Chapter Note 9(d) of Chapter 74. Rather, the subject goods are art work in form of sculpture of Statue of Shree Adi Shankaracharya made through Computer Aided Design, having a relief on surface which is carefully shaped, foam modelled, carved, casted, sand mounded, cut into pieces with no utility other than assembling the same to complete and to give shape of ‘Statue of Oneness’. The said goods are imported in unassembled form and they are marked and numbered in a way that the assembly of such parts are pre-defined and pre-determined and clearly fall under the meaning and scope of sculpture. During the course of personal hearing the technical person/engineer





(representative) accepted that these are a kind of disassembled part of the subject final goods i.e. Statue of Oneness. It is aptly clear that such goods have no other use but to be a specific located part of the 'Statue of Oneness'. Thus it can be safely assumed that the subject goods i.e. Bronze Cladding Panel (BCP) has the essential characteristics of Art and sculpture reflecting in the form of the 'Statue of Oneness'. It can be seen that the subject goods 290 in nos. is a Computer Aided product, serially numbered for giving specific shape and design on assembly. Also if it is assembled in a manner other than the pre-designed and determined one, the whole purpose of manufacturing and import of the subject goods is completely vitiated and prima-facie this is not the intention of the applicant. Therefore, the applicant's submission regarding the parts not having essential characteristics is not sustainable and Rule 2(a) appears to be squarely applicable.

**9.1** The applicant has submitted that in case of import of 'Bronze Cladding Panel' used for construction in the case of 'Statue of Unity' the Hon'ble CESTAT after considering the facts and circumstances of that case, vide its Final Order No. A/11901-11902/2021 dated 24.05.2021 upheld the classification under CTH 83062110. In the said case the authorized representative of the applicant had contended that the imported goods are correctly classifiable under CTH 8306 as the same are nothing but the components of the main statue itself. He submitted that in view of Rule 2(a) of General Rule for Interpretation of the Schedule which stipulates that an item presented in an unassembled or disassembled form is to be treated as the item as a whole itself. In the present case it is an undisputed fact that imported goods are components or parts of the main statute itself imported in a completely knockdown (CKD) form and hence the same would be classifiable under CTH 8306.

**9.2** However, on going through the operative portion of the said order it is observed that the Hon'ble CESTAT vide para 10 of its order concluded the matter as per follow:

*In view of the above settled law, irrespective whether the classification claimed by the appellant is correct or not since the classification proposed by the Revenue is absolutely incorrect, the entire case of the Revenue will not sustain. Therefore, we are not addressing the issue that whether the appellant's classification was correct or otherwise. The appellant also made an alternate submission that even if the classification declared by them under CTH 8306 2110 is incorrect the goods are otherwise classifiable under CTH 9703 in such tariff entry also the IGST Rate is 12% and therefore, there will be no revenue implication. Though alternate classification suggested by the appellant appears to be prima facie correct but since we have already taken a view that Revenue's claim of classification under CTH 8311 is absolutely incorrect. And it is nobody's case in the Show Cause Notice that the goods are classified under CTH 9703 we are not addressing this issue. However, since the Revenue's claim of classification is held to be incorrect the entire proceeding of the Revenue is quashed. The impugned order is set aside. The appeal is allowed with consequential relief, if any arise, in accordance with law.*

**9.3** In view of the above, I find that the applicant itself made an alternate submission that the goods Bronze Cladding Panel (BCP) are otherwise classifiable under CTH 9703 and the Rule 2(a) of the GRI is squarely applicable and that the Hon'ble CESTAT approved the same. However the proceeding before Hon'ble CESTAT was quashed on different ground other than that of merit. I find that GRI 2 (a) provides that complete or finished articles presented





unassembled or disassembled (which may occur for reasons related to the packing, handling or transportation of the articles) are to be classified in the same heading as the assembled article. It also provides that incomplete or unfinished articles presented unassembled or disassembled are to be classified in the same heading as the complete or finished article provided that as presented they have the essential character of the complete or finished article.

9.4 It is evident that for the construction of the 'Statue of Oneness' these Bronze Cladding Panel (BCP) which are de-facto the work of Art and sculpture and have been designed through CAD (Computer Aided Designed) in China. Such BCPs have gone through the different processes viz. modelling, moulding, casting, cutting in different pieces so as to materialize the scheme through assembling in pre-arranged form to give shape of Shree Adi Shankaracharya to be known as Statue of Oneness and accordingly have been imported into India.

10.1 The Hon'ble Supreme Court in the case of Ambika Quarry Works Vs. State of Gujarat and Others 1987 (1) SCC 213 has observed that:

*"The ratio of any decision must be understood in the background of the facts of the case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it."*

10.2 Similarly, the Hon'ble Supreme Court in the matter of Bhavnagar university Vs. Palitana Sugar Mills Pvt. Ltd. 2003(2) SCC has observed that:

*"It is well settled that a little reference in facts or additional facts may make a lot of difference in the precedential value of a decision"*

10.3 The applicant has relied upon the different case laws but the background and the issues involved in those case laws are in different perspectives and are not squarely applicable in this case at hand.

11. Thus, it is in terms of the nature of the goods, description of Chapter 97 and relevant Chapter notes pertaining to it read with Rule 2(a) of the General Rules of Interpretation, I come to conclusion that the subject goods i.e. 'Bronze Cladding Panels (BCP)' is classifiable under heading 9703 and more specifically under sub-heading 97039010.

12. I rule accordingly.

*P K Rameshwaram*  
23/11/24

(P K Rameshwaram)

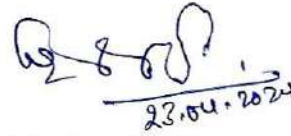
Customs Authority for Advance Rulings, Mumbai



F.No. CAAR/CUS/APPL/77/2023-O/o Commr-CAAR-Mumbai Dated: -04-2024

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

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8. Guard file.

  
23.04.2024

(V M Sobhan Sindhia)

Asst. Commissioner & Secretary  
Customs Authority for Advance Rulings, Mumbai

