

**Customs, Excise & Service Tax Appellate Tribunal  
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

**Customs Appeal No. 10172 of 2022**

(Arising out of OIA-AHD-CUSTOM-000-APP-1430-21-22 dated 13/01/2022 passed by Commissioner of CUSTOMS-AHMEDABAD)

**ALLEIMA INDIA PRIVATE LIMITED**

**.....Appellant**

Formerly Known As Sandvik Asia Pvt Ltd Plot No 1174 Village Taluka Kadi Mehsana Rajpur ,  
Mehsana  
Gujarat

*VERSUS*

**C.C.-AHMEDABAD**

**.....Respondent**

Custom House,  
Near All India Radio Navrangpura,  
Ahmedabad, Gujarat.

**APPEARANCE:**

Shri T. Vishwanathan & Shri Manish Jain, Advocates for the Appellant  
Shri Dinesh Prithiani, Assistant Commissioner (AR)

for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR  
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

**Final Order No. A/ 10387 /2023**

DATE OF HEARING: 02.11.2022  
DATE OF DECISION: 01.03.2023

**RAJU**

This appeal has been filed by Sandvik Materials Technology India Private Limited against the classification of the goods imported by them from the CTH 75051220 to CTH 72189910.

2. The appellant's are engaged in manufacture of seamless tubes and pipes the appellant imported certain goods and filed bills of entry seeking classification under CTH 75051220 of Custom Tariff and claim the benefit of Notification Sr. No. 384 of Notification No. 50/2017 dated 30.06.2017 exempting all goods of chapter 75 from BCD. The mill test certificate was provided by the appellant. The said report was as under :-

| Elements   | Symbol | Heat No. 343279 | Heat No. 326692 |
|------------|--------|-----------------|-----------------|
| Nickel     | Ni     | 62.15           | 62.26           |
| Cobalt     | Co     | 0.02            | 0.01            |
| Chromium   | Cr     | 21.03           | 20.99           |
| Iron       | Fe     | 4.56            | 4.59            |
| Molybdenum | Mo     | 8.2             | 5.22            |

|        |   |      |      |
|--------|---|------|------|
| Carbon | C | 0.02 | 0.02 |
|--------|---|------|------|

2.1 Chapter Note under chapter 75 for Nickel alloys reads as under :

*"Metallic substances in which nickel predominates by weight over each of the other elements provided that:*

- i. The content by weight of cobalt exceeds 1.5%,*
- ii. The content by weight of at least one of the other elements is greater than the limit specified in the foregoing table, or*
- iii. The total content by weight of elements other than nickel plus cobalt exceeds 1 %."*

At the time of first assessment of the goods the Deputy Commissioner of Customs, Air Cargo Complex classified the goods under CTH 72189910 as billets of stainless steel on the ground that the content of cobalt didn't exceeds 1.5 %. He also relied on the definition of stainless steel appearing in Chapter 72 of the Customs Tariff Act. The issue was challenged before the Commissioner (Appeals) who vide order dated 12.12.2019 remanded the issue to re-examine the issue in the light of section notes, chapter note, definition of Ferro alloy stainless steel, Nickel alloys etc . The matter was again adjudicated by the Deputy Commissioner and the Deputy Commissioner approved the classification under 75051220. Revenue filed an appeal against the said order before the Commissioner (Appeals) who set aside the order of the Deputy commissioner and classified the goods under CTH 72189910. Aggrieved by the said order of the Commissioner (Appeals) the appellants filed the present appeal.

Learned counsel appearing for the appellant pointed out that the CTH 75051220 reads as under :

| 7505       | NICKEL BARS, RODS, PROFILES AND WIRE |     |    |   |
|------------|--------------------------------------|-----|----|---|
|            | -Bars , rods and profiles:           |     |    |   |
| 7505 11    | -- Of nickel, not alloyed :          |     |    |   |
| 7505 11 10 | -- Hollows bars                      | kg. | 5% | - |
| 7505 11 20 | -- other bars; rods and profiles     | kg. | 5% | - |
| 7505 11 12 | -- Of nickel alloys:                 |     |    |   |
| 7505 12 10 | -- Hollows bars                      | kg. | 5% | - |
| 7505 12 20 | -- other bars; rods and profiles     | kg. | 5% | - |

He relied on note 5 of section XV to assert that the alloy of the base metal must be classified as an alloy of the metal which by weight predominates the total weight of other element. Note 5 of section XV reads as follows:-  
(D)

- "5. Classification of alloys (other than Ferro-alloys and master alloys are defined in Chapters 72 and 74)
- (a) an alloy of base metals is to be classified as an alloy of the metal which predominates by weight over each of the other metals;
- (b) an alloy composed of base metals of this Section and of elements not falling within this Section is to be treated as an alloy of base metals of this Section if the total weight of such metals equals or exceeds the total weight of the other elements present;
- (c) in this Section, the term " alloys" includes sintered mixtures of metal powders, heterogeneous intimate mixtures obtained by melting (other than cermets) and intermetallic compounds"

2.2 Learned counsel further argued that the imported goods do not fall under the category of "Nickel, not alloyed" described under sub heading 1 (a) of chapter 5. He argued that the condition necessary to fall under that category is that the metal weight by content should be at least 99% of Nickel plus cobalt coupled with the condition that the cobalt content by weight does not exceeds 1.5% and also that the content by weight of any other element does not exceeds the limit specified. The said sub- heading note 1 to chapter 75 reads as follows:-

**"Sub-Heading Notes:**

1. In this Chapter the following expressions have the meanings hereby assigned to them:
- (a) Nickel, not alloyed
- Metal containing by weight at least 99% of nickel plus cobalt, provided that:
- (i)the Cobalt content by weight does not exceed 1.5% and
- (ii)the content by weight of any other element does not exceed the limit specified in the following table:

**TABLE- OTHER ELEMENTS**

| Elements              |        | Limiting content %by weight |
|-----------------------|--------|-----------------------------|
| Fe                    | Iron   | 0.5                         |
| O                     | Oxygen | 0.4                         |
| Other elements , each |        | 0.3                         |

- (b) Nickel alloys
- Metallic substances in which nickel predominates by weight over each of the other elements provided that:
- i. The content by weight of cobalt exceeds 1.5%

- ii. *The content by weight of at least one of the other elements is greater than the limit specified in the foregoing table, or*
- iii. *The total content by weight of elements other than nickel plus cobalt exceeds 1 %"*

2.3 He pointed out that the iron content in the consignment is approximately 4.5 % by weight and therefore the goods imported by them would not fall under the category of Nickel not alloyed as described in the sub heading note 1 (a). He argued that the goods are correctly classifiable under the head of Nickel alloys as described under sub heading 1 (b) of chapter 75. He pointed out that the iron content in the goods imported is 4.5% and therefore in terms of sub heading note 1(b)(ii) the goods would be classified as Nickel alloy. He argued that to qualify as Nickel alloy any one of three conditions prescribed under sub – heading note 1 (b) of chapter 75 needs to be satisfied. He argued that the Revenue is proceeding under the presumption that condition (i) of sub heading note 1 (b) of chapter 75 has to be mandatorily satisfied for the goods to qualify as Nickel alloy. He argued that this is the mistaken belief of revenue. He pointed out that in the sub – heading note 1 (b) after clause (i) there is no "and" mentioned. He pointed out that in clause 1(a) of the sub heading note of chapter 3 & 4 between clause (i) and (ii) there is specific mention of word "and". He argued that whenever the legislature wanted two or more condition to be simultaneously satisfied then word " and" was incorporated in the conditions itself.

2.4 He further argued that the imported goods are certainly not classifiable under chapter 72 as stainless steel. Technically and commercially Nickel alloy N-06625 is treated as Nickel alloy and not as steel or stainless steel. He argued that the weight of Nickel is 62.26%, the total weight of iron is less than 5 %. He argued that in these circumstances the question of classifying the goods under chapter 72 does not arise. He pointed out that as per IS- 6569: 1996 which covers Stainless steel, billets and slabs, the limit for the Nickel content is 14%.

3. Learned AR relies on the impugned order.

4. We have considered rival submissions. The limited issue in the present case is that whether the goods imported by the appellant i.e. nickel alloy billets are classifiable under CTH 75051220 or CTH 72189910. Nickel alloys billets of nickel falls under the tariff entry 7505 which reads as under :

| 7505       | NICKEL BARS, RODS, PROFILES AND WIRE |     |    |   |
|------------|--------------------------------------|-----|----|---|
|            | -Bars , rods and profiles:           |     |    |   |
| 7505 11    | -- Of nickel, not alloyed :          |     |    |   |
| 7505 11 10 | -- Hollows bars                      | kg. | 5% | - |
| 7505 11 20 | -- other bars; rods and profiles     | kg. | 5% | - |
| 7505 11 12 | -- Of nickel alloys:                 |     |    |   |
| 7505 12 10 | -- Hollows bars                      | kg. | 5% | - |
| 7505 12 20 | -- other bars; rods and profiles     | kg. | 5% | - |

It appears from the record that the imported goods by the appellant was declared as Nickel billets, which was classified under CTH 75051220. Nickel Billets falls under this tariff entry, regarding which there is no dispute. As per the mill test certificate submitted by the appellant, the imported item was found to be composed of more than 60% of nickel and the rest other alloying elements.

4.1 We find that as per the Note 5 of Section XV, an alloy of a base metal has to be classified as an alloy of the metal which by weight predominates over total weight of other elements. In the present case the composition of iron is less than 5% and nickel is 62.26% which means that the nickel predominates over the content of iron and other elements. For this reason itself the goods in question would ordinarily be classifiable as nickel alloy. However, the contention of revenue is that the goods get excluded from this category by virtue of sub heading note 1 (b) (i).

4.2 Learned Counsel also placed reliance on the sub-heading notes and argued that the imported goods do not fall under the category of “nickel, not alloyed” prescribed under sub –heading 1 (a) of the Chapter note 75. We find that according to the Note 5 of Section XV , the metal nickel clearly do not fall under the sub-heading 1 (a) of chapter 75 as the Note 5 of Section XV prescribes that an alloy of a base metal has to be classified as an alloy of the metal if the cobalt, iron, oxygen or other elements exceed the limit prescribed in the sub heading note 1 (a).

4.3 We find that the said assessment on the part of Revenue is based on the interpretation of sub heading note 1 (b) which reads as follows:-

**"Sub-Heading Note:**

(b) Nickel alloys

*Metallic substances in which nickel predominates by weight over each of the other elements provided that:*

- (i) The content by weight of cobalt exceeds 1.5%*
- (ii) The content by weight of at least one of the other elements is greater than the limit specified in the foregoing table, or*
- (iii) The total content by weight of elements other than nickel plus cobalt exceeds 1 %"*

4.4 We find that the argument of the Revenue in holding that imported material is not nickel alloy is the fact that it contains cobalt less than the quantity specified in sub heading note 1 b (i), which requires that the content of weight of cobalt should exceeds 1.5 %. The Revenue is of the opinion that condition 1 b (i) if not fulfilled would take the material out of the category of nickel alloy. In other words the revenue is of the opinion that condition 1 (b)(i) is the mandatory condition for anything to be classified as nickel alloy.

4.5 It is observed from note 5 of Section XV that for any material to be classified as nickel alloy . The nickel must pre dominate by weight over each of the other elements. It seen that in the instant case the weight of nickel is an excess of 60% and therefore there is no doubt that this requirement of Section note 5 of Section XV is fulfilled.

4.4 Now, the issue needs to be decided is if the requirement of sub heading 1 (b)(i), 1 (b) (ii) and 1 (b) (iii) have to be satisfied together or independently. We find that between sub heading note 1 (b) (i) and 1 (b) (ii) there is no mention of "and" or "or". Between sub heading 1 (b) (ii) and 1 (b) (iii) there is specifically mention of word "or". Interpreting the above text the revenue has come to the conclusion that to qualify as nickel alloy sub heading note 1 (b)(i) has to be mandatory satisfied along with the conditions specified in sub heading note of 1 (b) (ii) or condition specified in sub-heading note 1 (b)(iii).

4.5 First of all we find that there is no " and" appearing between sub heading note 1 (b) (i) and 1 (b) (ii) which itself indicates that it is not necessary to satisfy both the condition prescribed in sub heading note 1 (b) (i) and 1 (b) (ii). Learned counsel has rightly pointed that whenever two conditions have to be simultaneously satisfied the legislature has put the word "and" between those condition. He cited the example of note 3 and 4 of chapter 4 which is reads as follows:-

"3. Products obtained by the concentration of whey and with the addition of milk or milkfat are to be classified as cheese in heading 0406 provided that they have the three following characteristics:

- (a) a milkfat content, by weight of the dry matter, of 5% or more;
- (b) a dry matter content, by weight, of at least 70% but not exceeding 85%; and
- (c) they are moulded or capable of being moulded.

4 This Chapter does not cover:-

- (a) products obtained from whey, containing by weight more than 95% lactose, expressed as anhydrous lactose calculated on the dry matter (heading 1702),
- (b) products obtained from milk by replacing one or more of its natural constituents (for example, butyric fats) by another substance (for example, oleic fats) (heading 1901 or 2106); or
- (c) albumins (including concentrates of two or more whey proteins, containing by weight more than 80% whey proteins, calculated on the dry matter) (heading 3502) or globulin (heading 3504)."

It is also seen from chapter note 5 to chapter 48 which is reads as follows:-

"5. For the purposes of heading 4802, the expressions "paper and paperboard, of a kind used for writing, printing or in the unfolded state. other graphic purposes" and "non-perforated punch-cards and punch tape paper" mean paper and paperboard made mainly from bleached pulp or from pulp obtained by a mechanical or chemi-mechanical process and satisfying any of the following criteria:

For paper or paperboard weighing not more than 150 g/m<sup>2</sup>:

- (a) containing 10% or more of fibres obtained by a mechanical or chemi-mechanical process, and

1. weighing not more than 80 g/m<sup>2</sup>, or

2. coloured throughout the mass; or

- (b) containing more than 8% ash, and

1. weighing not more than 80 g/m<sup>2</sup>; or

2. coloured throughout the mass; or

- (c) containing more than 3% ash and having a brightness of 60% or more; or

(d) containing more than 3% but not more than 8% ash, having a brightness less than 60%, and a burst index equal to or less than 2.5kPa. m<sup>2</sup>/g; or

(e) containing 3% ash or less, having a brightness of 60% or more and a burst index equal to or less than 2.5kPa m<sup>2</sup>/g

*For paper or paperboard weighing more than 150 g/m²:*

- (a) coloured throughout the mass; or*
  - (b) having a brightness of 60% or more, and*
    - 1. a caliper of 225 micrometres (microns) or less, or*
    - 2. a caliper of more than 225 micrometres (microns) but not more than 508 micrometres (microns) and an ash content more than 3%;or*
  - (c)having brightness of less than 60%, a caliper of 254 micrometres (microns) or less and an ash content more than 8%*
- Heading 4802 does not , however, cover filter paper or paperboard (including tea-bag paper) or felt paper of paper board."*

From the above it is apparent that whenever legislature intended that two conditions have to be simultaneously satisfied it has specifically mentioned word "and" between those condition and whenever any one of the two conditions or more conditions are to be satisfied, the legislature has specifically put the word "or" in between those conditions.

4.6 It is also noticed that the sub-heading note 1 (b) (i) requires the content weight of cobalt to exceed 1.5%. The sub heading note 1 (b) (iii) requires the total content of nickel + cobalt to exceeds 1 %. If the sub-heading note 1 (b) (i) is held to be a necessary requirement then the sub heading note 1(b) (iii) becomes otiose in so far as if the alloy contains cobalt in excess of 1.5% then it will obviously satisfy the condition of Nickel + cobalt exceeding 1 % . In this background also it is seen that the sub heading note 1(b) (i), 1(b) (ii), 1(b) (iii) need not to be simultaneously satisfied for the purpose of classification of goods as nickel alloy.

4.7 From the above discussion it is apparent that satisfaction of heading note 1 (b) (i) is not necessary condition for anything to be classified as nickel alloy. Satisfaction of any of the three prescription namely sub heading note 1(b) (i), 1(b) (ii) or 1(b) (iii) is sufficient to classify the goods as nickel alloy. It is seen that in the instant case the composition of goods is as follows:-

| Elements   | Symbol | Heat No. 343279 | Heat No. 326692 |
|------------|--------|-----------------|-----------------|
| Nickel     | Ni     | 62.15           | 62.26           |
| Cobalt     | Co     | 0.02            | 0.01            |
| Chromium   | Cr     | 21.03           | 20.99           |
| Iron       | Fe     | 4.56            | 4.59            |
| Molybdenum | Mo     | 8.2             | 5.22            |
| Carbon     | C      | 0.02            | 0.02            |

From the above it is seen that nickel predominates in weight being 62.15 to 62.26 % in weight. It is seen that the iron content ranges from 4.56% to 4.59 %, therefore, sub heading note 1 (b) (ii) stands satisfied. Consequently, the goods qualify as nickel alloy in terms of Section note 5 of Section XV read with sub- heading note 1 (b)(ii) of chapter 75.

4.8 It is also not disputed by the Revenue that the said product is commercially also known as nickel alloy and not steel. This specific assertion has been made by appellant and the same has not been disputed by the Revenue.

5. In view of the above therefore the goods qualify as nickel alloy under sub heading note 1 (b) (ii). Consequently, the impugned order classifying the goods as steel cannot be sustained and is therefore set aside. Appeal is allowed.

(Pronounced in the open court on 01.03.2023)

**RAMESH NAIR**  
**MEMBER (JUDICIAL)**

**RAJU**  
**MEMBER (TECHNICAL)**

**geeta**