

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

~~~~~

REGIONAL BENCH – COURT NO. 1

**Customs Appeal No.60034 Of 2023**

[Arising out of OIO No.COMMR/VG/LDH/CUSTOMS/12/2022 dated 18.11.2022  
passed by the Commissioner of Customs, Ludhiana]

**Shri Sumit Arora**

**: Appellant (s)**

UnistarTechnoplast Pvt. Ltd.  
E-562,563, Phase-VI, Focal Point  
Ludhiana, Punjab

Vs

**The Commissioner of Customs,  
Ludhiana**

**: Respondent (s)**

ICD, GRFL, G.T. Road,  
Sahnewal, Ludhiana, Punjab-141001

**With**

**Customs Appeal No.60035 Of 2023**

[Arising out of OIO No.COMMR/VG/LDH/CUSTOMS/12/2022 dated 18.11.2022  
passed by the Commissioner of Customs, Ludhiana]

**Shri Amit Arora**

**: Appellant (s)**

UnistarTechnoplast Pvt. Ltd.  
E-562,563, Phase-VI, Focal Point  
Ludhiana, Punjab

Vs

**The Commissioner of Customs,  
Ludhiana**

**: Respondent (s)**

ICD, GRFL, G.T. Road,  
Sahnewal, Ludhiana, Punjab-141001

**AND**

**Customs Appeal No.60036 Of 2023**

[Arising out of OIO No.COMMR/VG/LDH/CUSTOMS/12/2022 dated 18.11.2022  
passed by the Commissioner of Customs, Ludhiana]

**M/s UnistarTechnoplast Pvt. Ltd.**

**: Appellant (s)**

[earlier known as Unistar Distributors  
Pvt. Ltd.]  
E-562,563, Phase-VI, Focal Point  
Ludhiana, Punjab

Vs

**The Commissioner of Customs,  
Ludhiana**

ICD, GRFL, G.T. Road,  
Sahnewal, Ludhiana, Punjab-141001

**: Respondent (s)**

APPEARANCE:

Shri Naveen Bindal and Shri Aman Garg, Advocates for the Appellant  
Shri Nikhil Kumar Singh, Authorised Representative for the Respondent

**CORAM:**

**HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)**

**HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**FINALORDER Nos.60586-60588/2023**

Date of Hearing: 20.09.2023

Date of Decision: 07.11.2023

***Per: P. ANJANI KUMAR***

The appellants, M/s Unistar Technoplast Pvt. Ltd., are engaged in the import of "Steel Balls"; the appellant classified the impugned goods under Chapter Heading 84829900 whereas Revenue is of the opinion that they are rightly classifiable under CTH 8714 9990. Officers of DRI have initiated investigation of the imports made by the appellant and have seized goods lying in their godowns and goods imported vide Bill of Entry No.5314957 dated 16.10.2019; statements of concerned persons of the appellant, some bicycle manufacturers, were recorded and a certificate of a Chartered Engineer has been obtained by the officers. A show-cause notice dated 06.09.2022 was issued proposing re-classification under CTH 8714 9990; recovering differential duty and imposition of penalty on the company and two Directors Shri Amit Arora and Sumit Arora; the proposals of the show-cause notice was confirmed vide OIO dated 18.11.2022. Hence, this appeal.

2. Shri Naveen Bindal assisted by Shri Aman Garg, learned Counsel for the appellants, submits that CTH 8482 9900 is a specific entry which covers "Steel Balls", whereas CTH 8714 is a general heading which covers parts and accessories of motor vehicles; in view of Clause (a) of Rule 3 of General Rules for Interpretation, specific entry should be preferred over a general entry. He submits that heading 8482 applies to "Polished Steel Balls", the maximum and minimum diameters of which do not differ from the nominal diameter by more than 1%, or by more than 0.05MM, whichever is less; other steel balls are classifiable under CTH 7326; as per the inspection report dated 04.10.2022, the impugned goods are established to be Polished Steel Balls and within the tolerance limit; therefore, they are classifiable under CTH 8482 only; as per Chapter Note 6 to Chapter 84, Steel Balls can either be classified under CTH 8482 or CTH 7326 but not under CTH 8714.

3. Learned Counsel further submits that Section Note 2(a) to Chapter (XVI) of Customs Tariff Act specifies that "*parts which are included in any of the headings of Chapter 84 or 85 (other than headings 8409,8431,8448,8466,8473,8487,8503,8522,8529,8538 and 8548) are in all cases to be classified in their respective headings.*

Further, Section Note 2(e) to Chapter 16 provides that:

'Parts' and 'Parts and accessories' do not apply to the following articles, whether or not they are identifiable as for the goods of this section.

(e) 'machines and apparatus of heading 8401 to 8479, or parts thereof, other than the radiators for the articles of this Section, article of heading 8481 or 8482

or, provided they constitute integral parts of engines or motors, articles of heading 8483'.

4. Learned Counsel further submits that the Department's reliance on Chartered Engineer Certificate issued by Shri Rajesh John is misplaced; his report was *qua* the query raised by the Department; he had no expertise and has given the report on the basis of the market survey from cycle industries; such survey does not require any expertise; even then, the report says that the impugned Steel Balls are generally used in the cycle industry; as a corollary, it is inferred that the other uses of the impugned Steel Balls is not ruled out; the Adjudicating Authority has not allowed the cross-examination of the Chartered Engineer. Learned Counsel submits that in fact, the impugned goods are also usable in the ceiling fans, ball bearings, automotive sub-assemblies, valves, LPG regulators, skating shoes, spray paint cans, drawer's slide, door locks, toys, agitators, sewing machines etc., as is evident by the report obtained by them from another Chartered Engineer, Shri Prateek Virmani.

5. Learned Counsel submits also that the appellants are importing from Customs station at Sonapat and Delhi; however, no dispute has been raised on the classification; also, no dispute was raised against other importers all over the country. Interestingly, DGCEI, New Delhi issued a show-cause notice dated 20.09.2016 to M/s Mahavir Associates wherein identical goods have been sought to be classified under CTH 8482 in place of CTH 8714 claimed by the assessee. Learned Counsel submits that the issue involved is of classification and as such, suppression with intent to evade payment of duty;

therefore, extended period cannot be invoked and penalty cannot be imposed. He relies on the following cases:

- Krishna Steel Industries- 2004 (172) ELT 305 (SC).
- National Engineering Industries Ltd.- 1995 (77) ELT 719.
- Pratap Engineering Works- 1995 (78) ELT 472 (Tri.).
- CC Vs Andhra Pradesh Paper Mills Ltd.- 1997 (94) ELT 110 (Tri.)
- NHB Bearing Limited- 2003 (153) ELT 173 (Tri. Mumbai) and 2004 (163) ELT 268 (Tri. Mumbai)
- CC Vs Sanghvi Swiss Refills Pvt. Ltd.- 1997 (94) ELT 644 (Tri.)
- Precision Rubber Industries (P) Ltd.- 2016 (334) ELT 577 (SC)
- Warner Hindustan Ltd.- 1999 (113) ELT 24 (SC).
- Hindustan Aeronautics Ltd.- 2019 (370) ELT 699 (Tri. Bang.)

6. Shri Nikhil Kumar Singh, learned Authorized Representative for the Department reiterates the findings of the impugned order and submits that the Shri Amit Arora in his statement has accepted that they earlier classified under CTH 8714 and later changed to CTH 8482; the customers of the appellants have also accepted that they have been purchasing the imported goods from the appellant since 2017 and are using the same in the manufacture of bicycles.

7. Learned Authorized Representative submits further that in the report given by the Chartered Engineer, Shri Partik Virmani, engaged by the appellant does not specify the hardness, grade of the impugned Steel Balls so as to decide its use; the main difference between the Steel Balls used in bearings of the cycles and others is in lapping; lapping is a low speed, low pressure abrading. Learned Authorized Representative further submits that the appellants were involved in a

case of under-valuation of impugned goods and have accepted their liability of duty, interest and penalty.

8. Learned Authorized Representative submits also that the adjudicating authority has given clear findings on classification; the appellants are catering to the bicycle manufacturers only; there is no dispute on the same; statements of the bicycle manufacturers are categorical that 1000 Grade balls are used in cycle industry only; view taken by other Customs Stations is not binding.

9. Learned Authorized Representative submits moreover, that Apex Court decided the issue of classification of impugned goods in the case vide order dated 04.04.96 affirming the decision of Tribunal in CCE, Jaipur Vs National Engineering India Ltd 1994(72) ELT 588(Tribunal) and National Engineering India Ltd Vs CCE, Jaipur 1994(73) ELT 173(Tribunal), He further submits that the cases relied upon by the appellants are not relevant to the issue.

10. Heard both sides and perused the records of the case. Classification of Steel Balls, imported by the appellants and classified under CTH 8482 9900, is under dispute. Department is of the opinion that the same are classifiable under CTH 8714 9990. The appellant's argument in their favour is based on the descriptions of goods in the tariff item; Chapter Note 6 to Chapter 84; Section Note 2(a) to Section-XVII and General Rule 3(a) of General Rules for the Interpretation of the Harmonized System. The appellants also rely on the fact that the Department has accepted the classification, in their

own case, in respect of imports at other ports and that Officers of DGCEI have issued a show-cause notice to a domestic manufacturer of Steel Balls seeking re-classification of the balls manufactured under CTH 8482.

11. On the other hand, Department relies on Section Note 2(c) to Section-XVII and General Rule 3(a) of General Rules for the Interpretation of the Harmonized System; statements of cycle manufacturers to whom the appellants have sold the imported Steel Balls; certificate issued by a Chartered Engineer Shri Rajesh John; statements of the Directors of the Company and judgment of the Tribunal in the case of National Engineering Ltd. (supra).

12. Before adverting to a discussion on the classification of the impugned goods, it would be beneficial to have a look at the relevant Section/ Chapter Notes and the Headings of the items under Customs Tariff Act, 1975. Rule 3 and 4 of General Rules of Interpretation are as follows:

3. When by application of Rule 2 (b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different

components, and goods put up in sets for retail sale, which cannot be classified by reference to 3 (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

(c) When goods cannot be classified by reference to 3 (a) or 3 (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

4. Goods which cannot be classified in accordance with the above Rules shall be classified under the heading appropriate to the goods to which they are most akin.

13. Section Note 2 and 2(a) to Section XVI of CTH 1975 reads as under:

Subject to Note 1 to this Section, Note 1 to Chapter 84 and Note 1 to Chapter 85, parts of machines (not being parts of the articles of heading 84.84, 85.44, 85.45, 85.46 or 85.47) are to be classified according to the following rules:

(a) Parts which are goods included in any of the headings of Chapter 84 or 85 (other than heading 84.09, 84.31, 84.48, 84.66, 84.73, 84.87, 85.03, 85.22, 85.29, 85.38 and 85.48) are in all cases to be classified in their respective headings.

14. Notes under Section XVI of HSN read as under:

14.1. Note 7 read as under:

"Heading 84.82 applies, inter alia, to polished steel balls, the maximum and minimum diameters of which do not differ from the nominal diameter by more than 1% or by more than 0.05mm, whichever is less.

Other Steel balls are to be classified in heading 73.26.

14.2. The explanation under Parts to Section XVI to HSN reads as under:

"1. **Polished steel balls** (whether for bearings of this heading, or not), the maximum and minimum diameter of which do not differ from the nominal diameter by more than 1% or by more than 0.05mm whichever is less; balls **not conforming** to this definition are classified in heading 73.26 (see Chapter Note 7)

14.3. Note 2(e) to Section XVII reads as under:

"(e) Machines or apparatus of headings 84.01 to 84.79, or parts thereof, other than the radiators for

the articles of this Section; articles of heading 84.81 or 84.82 or, provided they constitute integral parts of engines or motors, articles of heading 84.83;

14.4. Note A under Parts and Accessories of Notes to Section XVII of HSN

"This Note excludes the following parts and accessories, whether or not they are identifiable as for the articles of this Section:"

---

- (6) Certain other goods of Chapter 84, e.g:
  - (a) Taps, cocks, valves and similar appliances (e.g. radiator drainage taps, inner-tube valves) (heading 84.81).
  - (b) Ball or roller bearings (heading 84.82)

15. Note 2 and 2 (e) under Section XVII of Customs Tariff Act, 1975

reads as under:

"2.The expressions "parts" and "parts and accessories" do not apply to the following articles, whether or not they are identifiable as for the goods of this Section:

(a) to (d) ----

- (e) Machines or apparatus of headings 84.01 to 84.79, or parts thereof; articles of heading 84.81 or 84.82 or, provided they constitute integral parts of engines or motors, articles of heading 84.83;

16. A conjoint reading of the above provisions indicates that while deciding classification of any goods, one has to bear in mind that the heading which provides the most specific description shall be preferred to headings providing a more general description and that classification shall be determined according to the terms of headings and any relative section or chapter notes and, provided such headings do not otherwise require, according to the provisions laid down therein; the heading which provides the most specific description shall be preferred to headings providing more general description and when goods cannot be classified by reference to Rule 3 (a) and 3 (b) of General Rules for Interpretation of Schedule, they shall be classified under the heading which occurs last.

17. With reference to the impugned goods, the classification of competing headings is under CTH 7026, 8482 and 8714. In terms of Rule 3(a) of General Rules for Interpretation of the Schedule, specific heading is to be preferred. CTH 8482 for Ball or Roller Bearings has six single dash (-) headings. The last single dash pertains to Parts and the double dash under Parts i.e., 8482.91 is for Balls, Needles and Rollers; first triple dash under Balls, Needles and Rollers pertains to Balls. Therefore, CTH 8482 appears to contain a specific reference to Steel Balls. Chapter Note 2 (a) to Section 16 specifies that subject to Note 1 to this Section, Note 1 to Chapter 84 and Note 1 to Chapter 85, parts of machines of Chapters 84 and 85, parts of machines (not being parts of articles of heading 8484, 8544, 8545, 8546, 8547) are to be classified according to the following Rules:

“(a) parts which are goods included in any of the headings of Chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings.

18. We find that as per Chapter Note 6 to Chapter 84 in HSN “Heading 8482 applies, inter alia, to polished steel balls, the maximum and minimum diameters of which do not differ from the nominal diameter by more than 1 per cent, or by more than 0.05mm, whichever is less. Other steel balls are to be classified in heading 7326.” Section Note 2(a) to Section XVII says that *parts which are goods included in any of the headings of Chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective*

*heading.* A cumulative reading gives an understanding that Steel Balls if polished fall under CTH 8482 and if not polished under CTH 7326 and no way under Chapter 87. The appellant claims that the Steel Balls imported are polished whereas the appellant claims that as per the Chartered Engineer certificate obtained by them the impugned goods are polished. We find that the report given by the said Chartered Engineer mentions that 5/16" and 7/32" size is rarely used in some special hub applications in bicycles as per the information collected in the survey; sizes 5/8", 9/16" and 18.6mm are not generally used in bicycles; if they are to be used in bicycles, they should be polished. On going through the certificate issued by the Chartered Engineer, we find that the certificate does not specify whether the impugned Steel Balls are polished and gives an impression that the same is issued on the basis of a survey rather than on technical testing and examination. Moreover, the appellant's request for cross-examination of Shri Rajesh John was declined by the Adjudicating Authority. We are of the considered opinion that not giving an opportunity of cross-examining the Chartered Engineer constitutes violation of principles of natural justice.

19. We find that Hon'ble Supreme Court in the case of Krishna Steels (supra) held that with the incorporation of Chapter 6, the item now has to be classified either under Chapter 84 or under Chapter 73 and that an item has to be classified in accordance with Chapter notes. Tribunal in the case of Pratap Engineering Works (supra) held that in view of Note 6 to Chapter 84, Steel Balls of sizes 3/16", 5/32" and 1/8" with the variation, of both maximum and minimum diameter

from the nominal diameter in accordance with the permissible limits, merits classification under heading CTH 8482. Further, we find that Tribunal in the case of Indian Plastic Industries (supra) held that:

"6. We have considered the submissions. We find that in this case the valves are specifically mentioned by name under Chapter heading 84.81. The valves can be of any kind and includes inner tube valves also as per HSN Explanatory notes. Even according to subsequent amendment in 1996 a specific entry has been made for bicycle valves under Chapter heading 84.81 only. This shows that all tube valves are covered under Chapter heading 84.81. Since this is not mentioned as an article under any of the headings of Section XVII the Note 1(k) of Section XVI will become inapplicable. However, as per Note 2(a) to Section XVI parts which are goods included in any of the headings of Chapter 84 or Chapter 85 are, in all cases, to be classified in their respective headings, therefore, even if valves are parts of cycle their classification will be determined by Chapter Note 2(a) and since they are mentioned by name in Chapter heading 84.81 they will have to be classified under Chapter heading 84.81. The Tribunal decision in the case of *National Engineering India Limited* is not relevant as there was no corresponding entry in respect of steel balls under Chapter heading 84 and Chapter heading 84.82 only refers to ball bearings and not steel balls. Same is the case in the CEGAT decision reported in [1990 \(46\) E.L.T. 68](#) where hardware rings were extended the benefit of Notification 24/65 as parts of cycles. In the present case parts falling under Chapter heading 84 are not specified in Notification 62/86 the same cannot be held eligible for the exemption which was not the case in respect of Notification 24/65. Since the valves are held to be classifiable under Chapter heading 84.81 independent of the Board's circular the Gujarat High Court decision is also not relevant. We, therefore, allow the department's appeals by holding that the valves of cycles shall be classifiable under Chapter heading 84.81 and shall not be eligible for exemption under Notification 62/86.

20. We find that though the above cases are in regards to classification under Central Excise that the general principles of

classification remain the same. We find that learned Authorized Representative relies upon the judgment of the Tribunal in the case of National Engineering Industries Ltd. (supra). However, Tribunal in the case of N.H.B. Bearing Ltd. (supra) distinguished the decision in National Engineering (supra) and observing that:

6. We have carefully examined the rival submissions. We may straightaway proceed to examine the case with reference to Chapter Note 6, which we have extracted above. This Chapter Note classifies polished steel balls under Heading No. 84.82 where maximum and minimum diameters of the balls do not differ from the nominal diameter by more than 1% or by more than 0.05 mm, whichever is less. In the instant case, we find that the test report relating to a sample of the subject goods states that the goods are polished steel balls with maximum and minimum diameters not differing from the nominal diameter by more than 1% or by more than 0.05 mm (whichever is less), thereby satisfying the conditions specified in Chapter Note 6 (supra). Therefore we have to hold, following Pratap Engineering Works, that the polished steel balls of the appellants are classifiable under Heading 84.82 of the Tariff Schedule for the relevant period.

7. We have found that, in the Pratap Engineering Works case, the Tribunal has distinguished the case of National Engineering India Ltd. (supra) by noting that the steel balls considered therein were not polished. The decision in New Heaven Engineering Co. (supra) is also of no aid to the appellants. The sub-heading 7326.11, suggested by Id. Counsel has at once to be discarded for the simple reason that the sub-heading is applicable only to those forged or stamped articles of iron or steel, which are not further worked. In the instant case, the balls are further worked i.e., polished. The entry suggested by the Id. Counsel is, therefore, inapplicable to the subject goods.

21. In view of the provisions of law; the case laws and the discussion as above, we are of the considered opinion that the impugned goods can only be classified under CTH 8482 which is a

specific heading; moreover, other Notes of Section XVI or Chapter 84 do not exclude the classification of Steel Balls under CTH 8482. Further, the appellants have submitted that the appellants and other importers are importing from various Ports and all other Customs stations have accepted the classification under CTH 8482 whereas only the Commissionerate of Ludhiana have raised the issue. We are of the opinion that Customs being one Department need to have to maintain uniformity in respect of commodities imported at various stations. Giving a differential treatment to the appellants and supporting the same by stating that the classification arrived at other Customs stations has no bearing on the impugned case, is not acceptable. We find further that DGCEI have issued show-cause noticed dated 20.09.2016 to M/s Mahavir Associates, manufacturers of cycle grade steel balls asking them the show-cause as to why the steel balls manufactured by them should not be classified under CETH 8482.9119. Customs or Central Excise for that matter have to maintain uniformity in respect of classification to reduce unnecessary litigation.

22. Further, the Revenue is depending heavily on the statements made by the manufacturers who purchased the steel balls from the appellant- importer and seeks to classify the goods as parts of bicycles as they are being used by the manufacturers of bicycles. We find that the classification of any goods should be per se as per the descriptions in the individual headings, related Section/ Chapter notes and under no circumstances on the end use of the product. The impugned order has completely ignored the submission of the appellants that the steel

balls are also usable in other industries. Moreover, the Chartered Engineer, on whose certificate Revenue places reliance only makes and averment that the impugned goods are generally used by bicycle manufacturers. It is not the case of the Department that they are solely used by the bicycle manufacturers. Thus, we hold that classification cannot be based on end use.

23. We also find that learned Authorized Representative submits that the appellants in the past have classified the imported steel balls under CETH 8714.9990 and have also accepted their liability in a case of under-valuation booked against them. We find that the appellants cannot be forced to continue the classification they adopted in the past even though it was incorrect. We find that the appellants are free to correct the classification of the imported products. If the classification, so claimed, was wrong, it was incumbent upon the Department to rectify the same by taking legal recourse. For that reason, it cannot be held that the classification adopted by them previously is only correct. In view of the above, we hold that the impugned order is not legally sustainable and hence liable to be set aside. When the classification and duty demanded in the show-cause notice are set aside, there is no way that the penalty on the appellant's company and their directors can survive. Accordingly, penalties also are liable to be set aside.

24. In the result, we uphold the classification adopted by the appellants under CTH 8482.9900 and find that the impugned order is not sustainable. Consequentially, the appeals are allowed.

*(Pronounced on 07/11/2023)*

**(S. S. GARG)**  
MEMBER (JUDICIAL)

**(P. ANJANI KUMAR)**  
MEMBER (TECHNICAL)

PK