

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

~~~~~

REGIONAL BENCH – COURT NO. 1

**Excise Appeal No.577 Of 2012**

[Arising out of Order-in-Original No.28/DM/ADJN/CE/2011-2012 dated 02.12.2011 passed by the Commissioner of Central Excise & Customs, Delhi-IV, Faridabad]

**M/s Consolidated Coin Company Pvt. Ltd.** : **Appellant**  
13/22, Mathura Road, Faridabad

*VERSUS*

**The Commissioner of CGST, Faridabad** : **Respondent**  
New CGO Complex, NH-IV,  
NIT, Faridabad, Haryana-121001

**APPEARANCE:**

Shri B.L. Narasimhan, Ms. Krati Singh and Shri Aman Singh, Advocates  
for the Appellant  
Shri Pawan Kumar and Shri Aneesh Dewan, Authorised Representatives  
for the Respondent

**CORAM:**

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

**FINAL ORDER No.60517/2024**

DATE OF HEARING: 01.05.2024  
DATE OF DECISION: 06.09.2024

***PER: P. ANJANI KUMAR***

The appellants, M/s Consolidated Coin Company Pvt. Ltd., are an 100% EOU engaged in manufacture of coin blanks of copper alloys/ strips of copper/ coils of zinc & nickel; a part of the production cleared in DTA; the appellant classified the blanks manufactured by them under CETH 74094000 as copper plates, sheets and strips of thickness exceeding 0.15mm of copper nickel base alloys; on the basis of scrutiny of ER-2 Returns, a Show Cause Notice dated 09.03.2010 was issued to the appellants holding that copper coins are classifiable under CETH 7419; concessional rate of duty under Notification

No.23/2003 dated 31.03.2003 is not available to the appellants being in excess of the permissible limit and seeking to recover the duty on DTA clearances; the allegations in the Show Cause Notice have been upheld vide impugned order dated 02.12.2011. Hence, this appeal.

2. Shri B.L. Narasimhan, assisted by Ms. Krati Singh and Mr. Aman Singh, learned Counsels for the appellants, submits that as per Chapter Note 1(g) of Chapter 74, the products "Plates, Sheets and Strip" has to be flat surfaced; the cross-section of the product must be rectangular, with or without rounded corners; the item must possess uniform thickness, the item must not exceed  $1/10^{\text{th}}$  of the width and the item does not assume character of any other articles or products of other heading in order to be classified under heading 7409; as the coin blanks are geometrically cylindrical, cross-section forms a rectangle; it is evident from the drawing obtained from the Government Mint. He submits that Revenue disputes the classification on the ground that the cross-section is not rectangular and that the coin blanks are used for a specific purpose i.e making coins at the Government Mint; therefore, it must be classified under articles of copper i.e. CETH 7419.

2.1 Learned Counsel submits that the goods in question have not assumed the character of an article under Chapter Heading 7419 which is a residuary entry; residuary entry is meant only for those categories of goods which clearly fall outside the ambit of specified entries; unless it is established that the goods in question fall under any of the Tariff items mentioned therein, residuary entry cannot be

resorted to in terms of Rule 3(a) of General Interpretative Rules to the Central Excise Tariff. He submits further that the blanks have not attained the essential character of any other article of copper as several processes are required to be carried on the blanks to create the final coins; therefore, even though the blanks were cut to specifications required by the customers, the same cannot be classified under CETH 7419. He submits that international cross-rulings classify the blanks under CETH 7409 only. He relies on the following cases:

- A.R Thermosets Pvt. Ltd. – 2016 (339) ELT 500 (SC).
- Federal Gogul Goetze (India) Ltd. – 2011 (267) ELT 602.
- Champdany Industries Ltd. – 2009 (241) ELT 481 (SC).
- Hindustan Poles Corporation – 2006 (196) ELT 400 (SC).
- P. Chhotalal Manufacturers & Exporters – 2022 (382) ELT 254 (Tri. Mum.)
- Neel Metal Products Ltd. – 2017 (7) GSTL 76 (Tri. Chan.)
- Colts Auto Pvt. Ltd. – 1999 (107) ELT 542 (Tri.)
- CLA-2 RR:TC:MM 959721 JAS.
- CLA-2 CO: R:CM 950313 LTO

3. Learned Counsel for the appellants submits that the DTA entitlement, of concessional rate of duty, is available to coin blanks and coin strips as they are similar products; this fact is not disputed by the Department; He submits that in terms of Para 6.8(a) of FTP 2009-14, when 100% EOU manufacture two or more products, they can sell into DTA, any single product up to 75% of FOB value of specified products subject to the condition that the total DTA sale does not exceed the 50% of FOB value; coin blanks and coin strips being part of similar production process and having similar physical characteristics, they are similar products; the word “Similar” used in the policy does not mean identical goods; the impugned order relies on Board’s Circular No.12/2008 to hold that as coin blanks and coin

strips are not commercially interchangeable, the benefit is not available to the appellant and that the restriction of percentage applies to each category of export product; the said Circular has been considered by the Tribunal in the case of M/s Axiom Cordages and it has been held that the percentage entitlement should be seen from the value of specific products exported and not from the value of a single product. He relies on the following cases:

- Nat Steel Equipment Private Ltd. – 1988 (34) ELT 8 (SC).
- Suryavansi Spinning Mills Ltd. – 2016 (343) ELT 940 (Tri. Del.)
- Axiom Cordages Ltd. – 2021-TIOL-289 (Tri. Mum.)
- Hindustan Lever Ltd. – 2011 (268) ELT 252 (CESTAT Chennai)
- B.R. Steel Products Pvt. Ltd. – 2021 (378) ELT 356 (Tri. Mumbai)

4. Learned Counsel for the appellants further submits that once Education Cess is added to the Customs Duties to arrive at the aggregate value of Customs Duties, in terms of proviso to Section 3 (1) of the Central Excise Act, 1944, the question of charging Education Cess once again does not arise, as held by the Tribunal in the case of M/s Sarla Performance Fibres Ltd. – 2010 (253) ELT 203 (Tri. Ahm.); the Adjudicating Authority has confirmed the demand on the ground that the above decision has been appealed against by the Department; the appeal filed by the Department is dismissed by the Hon'ble Supreme Court in the case of Meghmani Dyes & Intermediates Ltd. – 2014 (307) ELT A79 (SC), although on the ground of delay. He further relies on Kumar Arch Tech. Pvt. Ltd. – 2013 (290) ELT 372

(Tri. LB) and Kadimi Tools Manufacturing Co. Pvt. Ltd. – Final Order No.62400/20018 dated 15.05.2018- CESTAT Chandigarh.

5. Learned Counsel for the appellants submits lastly that extended period is not invocable as the issue involves interpretation of law; the impugned order acknowledges this fact; as there was no positive act of suppression, mis-declaration, collusion etc. with intent to evade payment of duty on the part of the appellant; no evidence to that effect also has been adduced by the Department; therefore, demand beyond the normal period is not sustainable; accordingly, no penalty is imposable under Rule 25 of Central Excise Rules, 2002; as the duty demand does not survive, interest is also not payable.

6. Shri Pawan Kumar, assisted by Shri Aneesh Dewan, learned Authorized Representatives for the Department, reiterates the findings of the impugned order and submits that the classification was arrived on the basis of Rule 1 of General Rules of Interpretation and HSN Explanatory Notes and not on the basis of residual entry as alleged by the appellants. Learned Authorized Representative takes us through the relevant Chapter Notes, Headings of Tariff and HSN Explanatory Notes and submits that the classification arrived in the impugned order is correct. He submits that the fact that production of blanks involves various processes like blanking, annealing, washing and drying, upsetting (making a planchet), striking and packaging, clearly gives the understanding that coin blank is an article having a distinct shape, size and character as it has a definitive purpose distinct from a

plate, sheet or a strip, which is in the nature of a raw material on intermediate product having a general use.

7. Learned Authorized Representative distinguishes the cases of Chotta Lal Manufacturers and Exporters (*supra*) and submits that in that case aluminum slugs were imported to make tubes whereas in the present case, coin blanks are processed further as discussed in order to have a distinct shape, size and character having a specific use in the manufacture of coins. Learned Authorized Representative submits that the case of Neel Metal Products Ltd. and Colts Auto Pvt. Ltd. (both *supra*) are of no help to the appellant as the case involves classification of motor vehicle parts.

8. Learned Authorized Representative submits as far as the DTA entitlement is concerned that CBEC vide Circulars No.85/95 dated 26.07.1995 and No.07/2006 dated 13.01.2006 clarified that only goods which are similar or which belong to the same class as the export goods are eligible for DTA exemption and that different items should be commercially interchangeable to be eligible for DTA sale. Copper Strips and blanks are two distinct and separate products and cannot be held to be either similar or commercially interchangeable.

9. Heard both sides and perused the records of the case. The issues, which require deliberation in the instant case, are (i) whether the classification of the impugned coin blanks should be under Tariff Heading 74094000 as claimed by the appellant or 7419 as alleged by the Department; (ii) whether copper strips and coin blanks constitute

similar goods in order to avail benefit under Para 6.8(a) of Foreign Trade Policy, 2009-14 and (iii) whether the demand is barred by limitation.

10. Coming to the issue of classification, learned Counsel for the appellants submits that in order to classify under Heading 7409, the item must be flat surfaced; the cross-section of the product must be rectangular, with or without rounded corners; the item must possess uniform thickness, the item must not exceed  $1/10^{\text{th}}$  of the width and the item does not assume character of any other articles or products of other heading. He submits that it is evident from the drawing obtained from the Government Mint that the coin blanks are geometrically cylindrical, cross-section forms a rectangle and therefore are rightly classifiable under Heading 7409 in terms of Chapter Note 1(g) to Chapter 74. It is the case of the Revenue that the coin blanks have assumed the character of an article as they are manufactured to a specific size as per the order of the mint and undergo many processes than the simple strips and hence are classifiable under Heading 7419.

11. We find that in terms of Note 1(g) to Chapter 74, Heading 74.09 and 74.10 applied inter alia to plates, sheets, strips and foil with patterns (for example, grooves, ribs, chequers, tears, buttons, lozenges) 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. We find that it will

be beneficial to have a look at the competing Heading 7409 and 7419 to arrive at a conclusion. They are as follows:

**7409:**

|            |                                                                                                   |
|------------|---------------------------------------------------------------------------------------------------|
| 7409       | Copper plates, sheets and strip, of a thickness exceeding 0.15mm<br>-Of refined copper            |
| 7409 11 00 | -- In coils                                                                                       |
| 7409 19 00 | -- Other<br>- of copper-zinc base alloys (brass)                                                  |
| 7409 21 00 | --In coils                                                                                        |
| 7409 29 00 | --Other<br>Of copper-tin base alloys (bronze)                                                     |
| 7409 31 00 | --In coils                                                                                        |
| 7409 39 00 | --Other                                                                                           |
| 7409 40 00 | -of copper-nickel base alloys (cupro-nickel) or<br>copper-nickel-zinc base alloys (nickel silver) |
| 7409 90 00 | -of other copper alloys                                                                           |

**7419:**

|            |                                                                               |
|------------|-------------------------------------------------------------------------------|
| 7419       | Othe articles of copper                                                       |
| 7419 10    | -chain and parts thereof                                                      |
| 7419 10 10 | ---chain<br>---parts                                                          |
| 7419 10 21 | ----of copper chains                                                          |
| 7419 10 29 | ----other<br>-other                                                           |
| 7419 91 00 | --cast, moulded, stamped or forged, but not<br>further worked                 |
| 7419 99    | --other                                                                       |
| 7419 99 10 | ---Reservoirs, tanks, vats and similar<br>containers of a capacity above 300L |
| 7419 99 20 | ---Articles of copper alloys electro-plated with<br>nickel-silver             |
| 7419 99 30 | ---Articles of brass                                                          |
| 7419 99 40 | ---Copper worked articles                                                     |
| 7419 99 90 | ---Other articles of copper                                                   |

12. HSN Explanatory Notes to Heading 7419 are as follows:

74.19-Other articles of copper (+).

7419.10 Chain and parts thereof

- Other:

7419.91 - -Cast, moulded, stamped or forged, but  
not further worked

7419.99 - -Other

This heading covers all articles of copper other than those covered by the preceding headings of this Chapter or by Note I to Section XV, or articles specified or included in Chapter 82 or 83, or more specifically covered elsewhere in the Nomenclature.

This heading covers, in particular:

- (1) Safety pins and other pins (excluding hatpins and other ornamental pins, and drawing pins), of copper, not elsewhere specified or included.
- (2) Reservoirs, tanks, vats and similar containers for any material, of copper, of any capacity, whether or not lined or heat-insulated, but not fitted with mechanical or thermal equipment (see the Explanatory Notes to headings 73.09 and 73.10).
- (3) Containers for compressed or liquefied gas (see the Explanatory Note to heading 73.11).
- (4) Chain and parts thereof, of copper (see the Explanatory Note to heading 73.15), excluding chains having the character of imitation jewellery (eg., watch chains and trinket chains) (heading 71.17).
- (5) Articles of copper of the types listed in the Explanatory Notes to headings 73.25 and 73.26.
- (6) Electroplating anodes of copper or of copper alloys (e.g., brass) (see Part (A) of the Explanatory Note to heading 75.08).
- (7) Tubes and pipes to which fins or gills have been attached, e.g., by welding, not elsewhere specified or included.
- (8) Cloth, grill and netting of copper wire and expanded metal, of copper.
- (9) Springs other than clock or watch springs of heading 91.14.

The heading does not cover:

- (a) Woven fabric of metal thread, of a kind used in articles of apparel, as furnishing fabrics or the like (heading 58.09).
- (b) Prepared metal brazing plates of wire mesh (heading 83.11).
- (c) Wire cloth, made up into hand sieves or riddles (heading 96.04).

13. On going through the above, we find that Heading 7409 covers copper plates, sheets and strip of a thickness exceeding 0.15mm and that such goods remain in the heading if worked (eg. cut to shape,

perforated, corrugated, ribbed, channeled, polished, coated, embossed or rounded at the ages) provided that they do not thereby assume the character of the articles or of products of other headings. Basically, this heading covers plates, sheets and strips of copper or alloys thereof. If the item under dispute attains the character of a specific article, it goes out of the heading. We find that the coin blanks are manufactured by the appellants on the specific order given by the mint and they are manufactured in different sizes as per different coins. It is pertinent to note here that the HSN Explanatory Notes to the sub-heading 7419.91 says that the Explanatory Note to sub-heading 7326.11 and 7326.19 applies, *mutatis mutandis*, to the products of this sub-heading. In the case of cast or moulded products, the sprues and feeder heads may be removed. It is on record that the coin blanks undergo various processes. Firstly, the coins are punched out of straightened metal sheets and have the thickness as of a finished coin although slightly different diameter; thereafter, they are subjected to processes like annealing, washing & drying, upsetting, striking and bagging & packaging. We find that the coin blanks have already achieved the characteristics of coins and therefore, they cannot be categorized along with plates and strips. They have attained the essential character of a coin and therefore, they cannot be classified in the same category as plates and strips.

14. We find that learned Commissioner has correctly held that:

6A.---

"The party is manufacturing Coin Blanks comprising of alloy consisting of copper, zinc and nickel. These are manufactured by melting the virgin metal in the electrical induction furnace, converting them into strips and then after removing the imperfections by scalping and the rolling in the mill to reduce the strip thickness to 3.04 mm, slitting the side edges to remove the side cracks, polishing and punching of the same to get the required shape of coin blanks."

6D. From the perusal of the items listed in the above-mentioned headings along with the explanation provided in the chapter note, it is evidently clear that chapter heading 7409 applies mainly to the products which are in the nature of raw materials / intermediate products with regard to their end use i.e. they are in the nature of items of general use which are further used for manufacture of any other articles whereas chapter heading 7419 comprises of items which are more definitive in nature functionally or otherwise. As per chapter note 1(g) of chapter 74 of Central Excise Tariff Act, 1985, an item meriting classification under chapter heading 7409 should not have assumed the character of articles of products of other headings therefore it is important to decide whether the coin blanks manufactured by the party are not covered by any other heading of chapter 74. A perusal of the manufacturing process of coin blanks indicates that in order to manufacture coin blanks the virgin metal comprising of copper, zinc and nickel are first melted in induction furnace converting the same into strips and thereafter are further rolled to reduce the thickness to the desired size. These strips are then further subjected to the process of punching, slitting of the edges to remove the side tracks and polishing to get the desired shape of coin blanks strictly as per the design provided by Government of India mint. As the name coin blank itself suggest that by virtue of their distinct shape, size, character and their end use i.e. coin blanks are used only for minting of coins by Govt. of India mint, are definite articles of copper and thus cannot be used for any other purpose. Section Note 6 of Section XVI while explaining what amounts to manufacture also gives emphasis to the fact that blank is a definite article. Section Note 6 of Section XVI reads as follows: -

In respect of goods covered by the Section, conversion of an article which is incomplete or unfinished but having the essential character of the complete or finished article (including 'blank', that is an article, not ready for direct use, having the approximate shape or outline of the finished article or part, and which can only be used, other than in exceptional cases, for completion into a finished article or a part), into complete or finished article shall amount to 'manufacture'.

6E. From the explanation provided in the above Section note and the process of manufacture as discussed above along with the end use of the coin blanks, it is clearly evident that the coin blanks are having the exact shape, size, outline and character of an article and thus are definite articles of copper and are appropriately classifiable under Chapter heading 7419 of Central Excise Tariff Act, 1985.

15. In view of the above, we further find that by no stretch of imagination, the coin blanks cannot be classified along with plates and strips of copper as they have distinctive shape, size, character and use; whereas the plates and strips are in the nature of raw material, the coin blanks are near total manufactured item i.e. coins, except for the embossing or printing of the logo and value etc. on the coin blanks. We find that the cases relied upon by the appellants are of no use as the facts are different; the case of P. Chottalal Manufacturers & Exporters (supra) is about the classification of aluminum plates remaining after punching; dispute in the cases of Colts Auto Pvt. Ltd. and Neelmetal Products (both supra) is about whether the aluminum circles arising out of punching would merit classification as parts of automobiles; as the facts are different, the ratio of the cases is not applicable. We are of the considered opinion that the coin blanks manufactured by the appellants as per orders of the mint have

attained the characteristics of articles of copper and therefore, the appropriate classification would be under CETH 7419 as held by the impugned order. Therefore, we find that the ratio of the cases relied upon by the appellants have been rightly distinguished by the Adjudicating Authority and the learned Authorized Representative. When the items are clearly capable of being classified under CETH 7419 reference to advance Rulings by U.S. Customs is not required. Moreover, we find that Tribunal in the case of Madras Cements Ltd.- 2018 (362) ELT 822 (Tri-Chennai) held that:

**7.** The appellants have also taken recourse to the rulings of Harmonized Tariff Schedule of the United States (HTSUS) for products with brand name "Uniazul" and "Uniblock" which the mixture containing port land white cement and marble sand with the ratio of marble sand to cement being approx. 2.3 : 1. Uniblock contains 3.2% Hydrated lime and small amounts of calcium stearate, glass fiber, and pigments, in addition to cement and marble sand, the ratio of marble sand to cement being approx. 3.8 : 1. 'Uniazul' was described as a "thin set mortar" to be used to join tile; marble and ceramic coatings in walls and floors and 'Uniblock' was described as a "final finish on inside and outside walls and floor. HTSUS concluded that the mixtures are classified as "non-refractory mortar under sub-heading 3824.50.0050. Appellant claims that these headings will be applicable to their products also. In the first place, we find that both Uniblock as well as Uniazul have different compositions when compared to Ramco Super Fine and Ramco Tile Fix. The ratio of sand to cement in Ramco Super Fine is approx. 1 : 4 against 3.8 : 1 for Uniblock. So also, the ratio of sand to cement in

respect of Ramco Tile Fix is approx. 3 : 2 wherein the case of Uniazul it was 2.3 : 1. In our opinion, the products are widely differing in their composition and cannot be compared. Secondly, these rulings have been given by the US authorities in respect to their tariff which may be persuasive, but cannot be said to be binding in respect of disputes under Central Excise Tariff of India or for that matter have any precedential value.

16. Coming to the entitlement of the appellants to clear strips in DTA over and above the permissible limit, it is the contention of the Department that the appellants have cleared goods worth of Rs.6969.98 Lakhs in DTA whereas the permissible limit was Rs.6953.72 Lakhs as permitted by the Development Commissioner. The Adjudicating Authority records that the appellants have accepted their mistake and undertook to pay the differential duty on excess clearances along with interest. However, the dispute remains regarding the entitlement to clear each of the products. Policy Circular issued by the Ministry of Commerce clarifies that flexibility is provided by allowing DTA sale of a specific product up to 75% of the FOB value of export of the specific product within the overall entitlement of 50% of total FOB value of exports which can be cleared at concessional rate of duties. The Circular provides that within the DTA entitlement any of the specified product can be exported up to a value of 75% (later changed to 90%) subject to the overall limit of 50% of FOB Value in DTA. The appellants contend that as the strips and blanks manufactured by them are similar products, the entitlement cannot be looked into considering the export of only one item. On the other

hand, the Department contends that the items being not similar and commercially interchangeable, the eligibility of sale on concessional rate of duty, in DTA, cannot be decided together. The appellants contend that as per the provisions of Para 6.8 of Foreign Trade Policy, similar goods can be sold in DTA and similar do not necessarily mean identical goods. The appellants have relied upon the decision of the Tribunal in a few cases as cited above. We find that in the case of appellant themselves – 2013-TIOL-139-CESTAT-DELHI, Tribunal held that:

“The items exported by the appellant the “copper alloys coins blanks and copper zinc nickel strip” are the similar products, both falling under heading 7409 and since the DTA clearances are within the overall entitlement of 50% of the FOB value of the exports, in accordance with the provisions of Para 6.8(a) of the FTP the DTA clearances of any one of these products can be made up to 90% of the FOB value of the export. The DTA Sales of copper alloy coin blanks are well within 90% of their clearances. In view of this, the third objection of the Department also does not appear to be valid and as such the duty demand of Rs.83,23,000/- does not appear to be sustainable.”

17. We find that though for the purpose of classification under the Tariff, coin blanks and copper strips have been classified separately, they do not cease to be similar goods for the purpose of Para 6.8 of the Foreign Trade Policy. The entitlement claimed by the appellants is in order. We further find that the Tribunal in the case of Axiom Cordages (supra) held as under:

18. In terms of paragraph 6.8(a) of the FTP units which are manufacturing and exporting more than one product can sell any of these products into DTA up to 90% of FOB value of export of the

specific products, subject to the condition that total DTA sale does not exceed the overall entitlement of 50% of FOB value of exports for the unit as stipulated. A plain reading of the provisions of policy gives understanding that within entitlement of DTA sale, the units may sell in DTA, its products similar to goods which are exported or expected to be exported from units and in case they are manufacturing and exporting more than one product, they can sell in DTA any of this product subject to limitation of 90% of FOB value of export of the specific products. However, this is subject to overall entitlement of 50% of FOB value of exports. The policy is clear in saying that the units may sell "any" of these products into DTA and subject to 90% of export value of export of the specific "products." In our understanding, a plain meaning of words is that any of the products manufactured or exported can be sold in DTA. The only restriction that appears to be that the value of DTA clearances of any of the products should not exceed 90% of FOB value of export of the specific products. The catch here seems to be on the word "products" whereas the policy mentions the same to be specified products. The department wants to read the same down as "product." As seen above, Tribunal has taken a categorical stand on the interpretation of this provision in the case of measure ABI Showatech India, ABI Turnamatics and M/s Consolidated Coin (all supra), in favour of the appellants. IN the case of ABI Showatech the export value of bearing housing machines was only about 25 thousands, whereas value of DTA clearances was about 7crores. The same was held to be valid.

19. We find that EOUs are given a facility to clear the goods in DTA, as a reward for the exports made by them subject to the fulfilment of positive NFE. It may so happen that EOU unit manufacturing more than one product may not be able to export all the products in the same proportion; the overseas market may not have demand for all the products manufactured by them. Understandably, EOU cannot be expected to throw away or destroy the product or sell in DTA at a higher rate of duty resulting in financial loss. We find that, under these circumstances, a provision has been built in to the FTP, provision has been made to enable the manufacturer to sell

such goods in DTA. The Limitation of 90% of FOB of the products appears to have put to ensure that there is export of all the products manufactured and to ensure that a product which is not at all exported is not cleared in DTA. We find that, as the EOU scheme is based on value of clearances, once export obligation is fulfilled, the manufacturer cannot be constrained to clear particular products in DTA in proportion to the export of the specific product. This appears to be the understanding of the tribunal in the series of judgments cited above. Moreover, the facts and circumstances of the instant case being similar to that of the cases cited above, we find that the goods cleared in DTA are to be held to be similar to those exported and that the 90% entitlement should be seen from the value of exported specific products and not a single product. By following the ratio of the cases, we find that the DTA clearances of the appellants are in order.

18. Coming to the issue of demand of Education Cess, we are in agreement with the contention of the appellants that once Education Cess is added to the Customs duties to arrive at the aggregate value in terms of proviso to Section 3(1) of the Excise Act, 1944, the question of charging Education Cess once again does not arise. We find that Tribunal in the case of Sarla Performance Fibres Ltd. (supra) held that:

70. Now we come to the submissions made by Shri Ravindran, intervening on behalf of Godrej Industries Ltd. The conclusions submitted by Shri Ravindran have been reproduced in para 23 onwards. According to him, education cess has to be added only at the aggregate level and not at the level of each type of duty. For this purpose it is his submission that what is levied is not a duty of customs but a duty of excise measured and only the measure is customs duty. There is no dispute about this contention. However, we are not convinced about the correctness of the calculation made by the learned advocate. As already observed by us with regard to the nature

of education cess, it is a surcharge and is in the nature of enhancement by the quantum of education cess under Section 94 of Finance Act. Afterwards, to arrive at additional customs duty, what is required to be worked out is equallant excise duty levialbe. Therefore, since education cess enhances the quantum of excuse duty, additional customs duty at its own level has to be enhanced by the quantum of education cess. Since the aggregate of both the duties is again considered as customs duties in total, the addition of education cess again becomes necessary. Therefore, we do not find any logic in the submissions made by the learned advocate. Even though the contention that goods are manufactured in India is accepted, the fact remains that right from the inception of the 100% EOU scheme, the EOUs are treated differently as we have observed elsewhere. They are treated differently for various purposes under different provisions of excise law that being the position, only for the purpose of education cess, there cannot be a different treatment. Therefore what is required to be done is to calculate the aggregate of customs duties and thereafter apply it to 100% EOUs. Unless the calculation method adopted for arriving at aggregate of customs duties itself is challenged, which to our mind has not been done till now, challenging the same on other grounds does not appeal to us. As regards the submission that there is no specific exclusion of CVD in the provisions relating to education cess as compared with Section 3 of Customs Tariff Act, it is well accepted that additional customs duty is levied after calculating the excise duty leviable on like goods manufactured in India. This is the logic for levy of education cess separately on CVD while calculating customs duties.

19. Now, we turn our attention as to whether penalty can be imposed under Rule 25 of the Central Excise Rules. Learned Commissioner imposed a penalty of Rs.50 Lakhs on the appellant while observing that the main issue is of interpretation of law and therefore, he did not take a harsh view. We find that the issue is

about interpretation of the legal provisions and looking into the fact that a couple of advance rulings of U.S Customs are in favour of the appellants on the issue of classification and the fact that the Adjudicating Authority himself held the main issue to be about legal interpretation, we find that no case is made by the Department to impose penalty. Therefore, the penalty imposed is liable to be set aside.

20. In view of the above, the appeal is partly allowed under the following terms:

(i) We uphold the classification of impugned coin blanks under Chapter 7419 of Central Excise Tariff Act, 1985.

(ii) Confirmation of demand of duty of Rs.1,71,72,404/- along with interest is upheld.

(iii) Confirmation of demand of duty of Rs.83,23,000/- on the DTA clearances is set aside.

(iv) Confirmation of demand of Cess amounting to Rs.39,74,825/- is set aside.

(v) Penalty of Rs.50,00,000/- imposed on the appellant under Rule 25(1) of Central Excise Rules, 2002 is set aside.

(Order pronounced in the open Court on 06/09/2024)

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

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