

**AUTHORITY FOR ADVANCE RULINGS**  
**(CENTRAL EXCISE, CUSTOMS & SERVICE TAX)**  
**NEW DELHI**

**PRESENT**

**Mr. Justice P. V. Reddi (Chairman)**  
**Mr.A.Sinha (Member)**                      **Mrs. Chitra Saha (Member)**

**Friday, the 13<sup>th</sup> day of February 2009**

**Ruling No.AAR/01/CE/2009**  
**In**  
**Application No.AAR/10/CE/2008**

Applicant	M/s CS India Steel Private Limited Hangarakatta, Balekudru village P.O., Balekudru, udupi taluk, Udupi – 576 218, Karnataka.
Commissioners concerned	The Commissioner of Central Excise, VII Floor, Trade Centre, Bunts Hostel Road, Mangalore-575 003.  The Commissioner of Customs & CE, ICE House, EDC Complex, Plot No.6, Patto, Panaji, Goa – 403 001.
Present for the Applicant	Mr.S.Thirumalai, Advocate Mr.P.J. Joseph, Cost Accountant Mr.Alfred Tuinman, Controller-CS India
Present for the Commissioners Concerned	Mrs.Archana P.Tiwari, Jt.CDR Mr. Sumit Kumar, SDR

**R U L I N G**

(By Mrs. Chitra Saha)

This is an application for advance ruling filed under Section 23 C of the Central Excise Act, 1944 by CS India Steel Pvt. Ltd., Karnataka. The applicant is a wholly owned subsidiary Indian company of the foreign

company, Central Industry Group NV, Netherlands. The applicant states that it intends to manufacture and sell steel plates which would subsequently be used for manufacturing a ship's hull. A ruling on the following question relating to classification of the goods proposed to be manufactured has been sought:-

“Whether the steel plates proposed to be manufactured by the applicant is classifiable under chapter sub heading 8906 90 00 or under chapter sub-heading 7326 90 80 of the Central Excise Tariff”.

2. The application states that steel sheets would be cut and cold formed to produce steel plates through a computer controlled process. Each steel part will be uniquely marked with a part number. All the completed parts will be collected and stored until a complete section block, in the form of parts, is ready. These would be supplied to the customer in pre-determined batches, taking into account, the building sequence of the receiving ship-yard.

3. The applicant contends that the Note in chapter 89 of the First Schedule to the Central Excise Tariff Act, 1985 which covers “Ships, boats and floating structure” states “A hull, an unfinished or incomplete vessel, assembled, unassembled or disassembled or a complete vessel unassembled or disassembled, is to be classified in heading number 89.06 if it does not have the essential character of a vessel of a particular kind”. Rule 2 (a) of the Rules for Interpretation of the tariff clarifies that any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that the incomplete/unfinished article has the essential character of the complete or finished article. The Note of Chapter 89 and Rule 2(a) of the Rules of Interpretation together imply that the building kits comprising of the steel plates merit to be classified under

tariff item 89069000. Description of tariff item 73269080 viz “parts of ships, floating structure and vessels (excluding hull, propellers and paddle-wheels)” excludes hull. Also, Rule 3(a) of the Rules for Interpretation provides that the heading which gives more specific description should be preferred to the one giving a general one. In the instant case, a building kit comprising of a complete hull is specifically covered by “hull” of 8906 90 00 and should therefore be preferred to the general description of “hull parts” in 7308 90 30. Lastly Rule 3(c) specifies that when goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration. In the instant case chapter sub-heading 8906 9000 occurs last in numerical order amongst the various competing entries and therefore should be preferred over any earlier entry including 7308 9030.

4. The Commissioner of Central Excise, Mangalore in his comments on the application states that the applicant is not a manufacturer of hulls. It is the shipyard that welds together the steel plates and profiles to manufacture the hull. Thus, what is manufactured and supplied by the applicants are parts of hull. The conclusion that only parts of hull, and not complete hull is being manufactured is further confirmed from the fact that the applicant has nowhere stated that he is supplying 100% of the items required for the manufacture of hull. Parts of hull are specifically covered under 7308 9030 and it is this specific tariff item under which the goods should be classified.

5. In response to the Commissioner’s comments, the applicant states that what is being manufactured are ship building kits comprising of components bearing unique part numbers, which when assembled would lead to the formation of a complete hull. In the light of the above submission, the question on which the advance ruling has been sought has been slightly modified and it has been stated that the ruling sought, relates to the classification of these ship building kits. This kit, according to the

applicant is basically a complete hull, presented in an unassembled condition. Such a collection of sequentially numbered parts, constituting a complete hull can not be classified as “parts of hull” referred to in 73089030. It should rightly be classified under 89069000, which as per Note of Chapter 89, covers an unassembled and disassembled hull. This is the appropriate classification as this tariff item specifically covers hull and Rule 3(a) of the Interpretation Rules states that the more specific description should prevail over the heading providing a more general description. The applicant also relies on judgments in the case of CC Vs Hindustan Motors Ltd., 2003(156) ELT 155 (Tribunal-Delhi) and BAYERISCHL MOTOREN WERKE AKTIENGESELLSCHAFT [2006 (193) ELT 138 (AAR)].

6. The Departmental Representative relies on case laws\* and instruction in CBEC Manual 2001 (Chapter 3 part 11 para 2.1) to state that recourse to General Interpretative Rules cannot be had when classification is determinable on the basis of chapter and section notes and descriptions of tariff headings and sub-headings and that the end use of goods subsequent to clearance from factory cannot determine classification which has to be decided as per the condition of the goods at the time of clearance.

7. The issue on which advance ruling has been sought is the classification in the Central Excise Tariff of the steel plates i.e sections and profiles cleared by the applicant. The applicant is in the business of manufacture and sale of the steel parts which are used in the shipyards for the manufacture of the hull of ships. A hull is defined in the Concise Oxford English Dictionary as “the main body of a ship or other vessel, including the bottom, sides and deck but not the superstructure, engines, and other fittings”

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\* CCE v. Simplex Mills Co.Ltd 2005 (181) ELT 345 (SC)

CCE v. Carrier Aircon Ltd. 2006 (47) STC 421 (SC)

Dunlop India Ltd v. UOI 1983 (13) ELT 1566 (SC)

8. As soon as an order is received, the applicant obtains from its customer the production plan to be followed in the construction of the hull. The applicant thereafter draws up its own production plan in consonance with the production plan of the customer, detailing the sequence to be followed in the manufacture of steel profiles and sections. Steel sheets are thereafter procured and subjected to various processes such as milling, cutting, deboning, grinding etc., to produce the steel parts and sections that are required for the manufacture of the hull. Each part is given a unique part number. The parts are then supplied in batches as per the concept of 'just in time' followed in the process of production.

9. While the department contends for classification of the steel parts as "parts of hull" under 733089030, the applicant claims that the steel parts should be collectively classified as a hull under 8906 90 00, as all the sections and profiles supplied would be assembled to form a complete hull.

10. Chapter 89 covers "Ships, boats and floating the structures." The only Note in this chapter states "A hull, an unfinished or incomplete vessel, assembled, unassembled, or disassembled, or a complete vessel unassembled or disassembled, is to be classified in heading 8906 if it does not have the essential character of a vessel of a particular kind"

Chapter head 8906 and its sub headings read as follows :

"8906 : Other vessels, including warships and lifeboats other than rowing boats

8906 10 00 : Warships

8906 90 00 : Other"

"Articles of iron and steel" are covered under chapter 73 of the tariff. The tariff item 7308 90 30 contained therein is reproduced below:

“7308 90 30 : Hatchway rails and bulkheads for ships or boats and parts  
of hull”

11. The General Rules for Interpretation of the tariff contained in the First Schedule to the Central Excise Tariff Act, 1985 are given in the Schedule itself. The first rule of interpretation states:

“1. The titles of sections, chapters and sub-chapters are provided for ease of reference only; for legal purpose, 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 otherwise require, according to the following provisions.”

12. It is clear from the application that what would be cleared are different parts of a hull in batches comprising of parts of a complete block, and that supply of all the parts required for manufacture of a complete hull would be spread over a period of time. The goods cleared in a particular batch would answer to the description of “parts of hull” mentioned in the description of tariff item 7308 90 30. The applicant has claimed that note to Chapter 89 covers a hull in an unassembled/disassembled state and therefore parts of complete hull supplied over a period of time merit to be classified as a hull under 8906 90 00. The above interpretation of the Note appears to be fallacious: a reading of the Note clearly indicates that the adjectives “unassembled” or “disassembled” has not been made applicable to “hull”. As only complete hulls are covered in 8906 90 00, clearances of parts of a hull, even if all these clearances together constitute are complete hull, would not be covered in this tariff item. The applicant has pressed into service Rule 2 (a) of Rules of Interpretation to

buttress its argument that the sum total of the steel parts supplied which represents a hull in an unassembled state, merits classification as a complete hull under 8906. This Rule clarifies that any reference to complete goods in the Tariff also includes incomplete or un-finished goods, if such incomplete or unfinished goods have the essential characteristics of the finished goods. This rule further states that reference to unfinished goods referred to in tariff head will also include such goods cleared in unassembled or disassembled condition i.e. in SKD or CKD packs. The above line of argument put forward by the applicant also deserves to be rejected. It is clear from a reading of the Rules for Interpretation that these rules are to be applied serially and that if classification is determinable as per Rule 1 i.e. on the basis of Chapter Notes and headings, recourse cannot be had to the subsequent rules. Tariff sub-head 7308 90 30 covers “parts of hull” and the goods cleared in an individual consignment against a particular invoice clearly gets covered by such a description. Nothing prevents the use of these goods as replacement parts or individual components of hulls, instead of being used to assemble a complete hull. It is not permissible to ignore the actual condition of the goods cleared and assess them on the basis of anticipated future use because the duty becomes exigible at the point of removal from the factory. 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. The above line of interpretation is succinctly brought out in para 11 of the Supreme Court’s Judgement in case of CCE Nagpur Vs Simplex Mills Co. Ltd. 2005(181) ELT 345 (S.C.) which is extracted below:

“ The rules for the interpretation of the Schedule to the Central Excise Tariff Act, 1985 have been framed pursuant to the powers under Section 2 of that Act. According to Rule 1 titles of Sections and Chapters in the Schedule are provided for ease of reference only. But for legal purposes, classification “shall be determined according to the terms of the headings and any relevant section or Chapter

Notes”. If neither the heading nor the notes suffice to clarify the scope of a heading, then it must be construed according to the other following provisions contained in the Rules. Rule 1 gives primacy to the Section and Chapter Notes along with terms of the headings. They should be first applied. If no clear picture emerges then only can one resort to the subsequent rules”

13. The structure of the Central Excise Tariff is based on the internationally accepted nomenclature in Harmonized System of Nomenclature (HSN). Supreme Court, in the case of CCE, Shillong Versus Wood Crafts Products Limited 1995(77) ELT 23(SC), has held that when the tariff entry is patterned on HSN, disputes relating to tariff classification must, as far as possible be resolved with reference to HSN Explanatory Notes. In the instant case the conclusion that parts of ships and boats, other than a complete hull, are excluded from Chapter 89 is reinforced by the Explanatory Notes to HSN. The General notes on Chapter 89( p. 1757, HSN Explanatory Notes 3<sup>rd</sup> edition) mentions that “Hull of any material” are covered by Chapter 89 and elaborates as follows “Complete vessels presented unassembled or disassembled, and hulls, unfinished or incomplete vessels (whether assembled or not), are classified as vessels of a particular kind, if they have the essential character of that kind of vessel. In other cases, such goods are classified in heading 89.06.” It is clear from the above note that the expression “hulls” stands by itself and is not qualified by adjectives such as unassembled & disassembled as in case of complete and incomplete vessels. Thus, the only part of a ship/vessel that is covered in

Chapter 89 is a “hull”. The unassembled/disassembled parts of a hull are excluded from this Chapter. Again the General Notes on Section XVII, of which Chapter 89 is a part, mentions;

“It should be noted that Chapter 89 makes **no provision** for parts (other than hulls) or accessories of ships, boats or floating structures. Such parts and accessories, even if identifiable as being for ships, etc., are therefore classified in other Chapters in their respective headings.”

**(p.1712 HSN Explanatory Notes )**

Explanatory Notes on Chapter 89 itself reiterates the above :-

“Contrary to the provisions relating to the transport equipment falling in other Chapters of Section XVII, this Chapter **excludes** all separately presented parts (**other than** hulls) and accessories of vessels or floating structures, even if they are clearly identifiable as such. Such parts and accessories are classified in the appropriate headings elsewhere in the Nomenclature, for example :

- (1) .....
- (2) .....
- (3) .....
- (4) .....
- (5) Masts, hatchways, gangways, rails and bulkheads for ships or boats and parts of hulls, having the character of metal structures of **heading 73.08**”

**(p.1757 of HSN Explanatory Notes )**

14. The judgments in case of Hindustan Motors and BMW cited by the applicant are distinguishable from the present case. In coming to the conclusion that the parts/components imported were classifiable as the finished product i.e. cars/engines, reliance was placed on Rule 2 of the Rule of Interpretation. Resort to Rule 2 is not permissible in the present case as classification is determinable in terms of Chapter note and tariff description in view of Rule 1. There are also other factual differences. In the case of Hindustan Motors, for example, all the parts of an engine were being imported under a single bill of entry whereas in the instant case, the parts

of hull are cleared from the factory in separate consignments against different invoices from time to time.

15. In the above background, it is ruled that the parts of hulls, described by the applicant as a ship building kit, which are cleared over a period of time, for use in the manufacture of hulls, are classifiable under 7308 90 30 of the First Schedule to the Central Excise Tariff Act 1985 and not under 8906 90 00 or 7326 90 80.

The Ruling is pronounced in the open court of the Authority on this the 13<sup>th</sup> day of February, 2009.

Sd/-  
**(A.Sinha)**  
**Member**

Sd/-  
**(P.V.Reddi)**  
**Chairman**

Sd/-  
**(Chitra Saha)**  
**Member**

F. No. AAR/10(CE)/2008

Dated: 16<sup>th</sup> February, 2009

(A) This copy is certified to be a true copy of the Ruling and is sent to :-

1. M/s CS India Steel Private Limited, Hangarakatta, Balekudru village P.O., Balekudru, udupi taluk, Udupi – 576 218, Karnataka.
2. The Commissioner of Central Excise, VII Floor, Trade Centre, Bunts Hostel Road, Mangalore-575 003.
3. The Commissioner of Customs & CE, ICE House, EDC Complex, Plot No.6, Patto, Panaji, Goa – 403 001.
4. Member, Central Excise, Central Board of Excise and Customs, North Block, New Delhi.
5. Mrs. Archana P.Tiwari, Jt.CDR, Customs, Excise & Service Tax Appellate Tribunal, West Block-2, R.K.Puram, New Delhi-66.
5. Individual Folders of Chairman/Members
6. Guard File

**(Krishna A.Mishra)**  
**Addl. Commissioner**