

	OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421 Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62
A. File No.	: F. No. VIII/48-69/Adj./ADC/MCH/2019-20
B. Order-in- Original No.	: MCH/ADC/AK/02/2020-21
C. Passed by	: Shri Ajay Kumar Additional Commissioner of Customs, Custom House, AP & SEZ, Mundra.
D. Date of order /Date of issue	: 02.04.2020/ 02.04.2020
E. Show Cause Notice No. & Date	: VIII/48-382/LAR-10/18-19/Gr-III/Vinayak/MCH/2019-20 Dated 17.10.2019
F. Noticee(s)/Party/ Importer	: M/s Vinayak Engineering, Romer Estate, Near Maliya Fatak, Mahendra Nagar Road, 8-A National Highway, Morbi-363642, Gujarat

1. यह अपील आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1- में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

“ सीमा शुल्क आयुक्त (अपील), कांडला

7 वीं मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड़, अहमदाबाद 380 009”

“THE COMMISSIONER OF CUSTOMS (APPEALS), KANDLA

**Having his office at 7th Floor, Mridul Tower, Behind Times of India,
Ashram Road, Ahmedabad-380 009.”**

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must accompanied by –

(i) उक्त अपील की एक प्रति और

A copy of the appeal, and

(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं.-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.

5. अपील जापान के साथ ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।

Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

Sub.:- Show Cause Notice F. No. VIII/48-382/LAR-10/18-19/Gr-III/Vinayak /MCH/2019-20 dated 17.10.2019 issued to M/s Vinayak Engineering, Romar Estate, Near Maliya Fatak, Mahendra Nagar Road, 8-A National Highway, Morbi-363642 (Gujarat)

BRIEF FACTS OF THE CASE

M/s Vinayak Engineering, Romar Estate, Near Maliya Fatak, Mahendra Nagar Road, 8-A National Highway, Morbi-363642 (Gujarat) (holder of IEC No. 2412007713) (hereinafter also referred to as “the importer”/Noticee”) presented Bill of Entry No. 3714459 dated 23.10.2017 detailed in Annexure-I to the Show Cause Notice, through their Customs Broker M/s Sai Clearing and Forwarding Agency, at Custom House, Mundra, for clearance of imported goods declared as “FCRI Ceramic Roller” classifying the same under Tariff Item 69039090 of first schedule of the Custom Tariff Act, 1975.

1.1 The subject Bill of Entry dated 23.10.2017 was assessed wherein benefit provided at serial No. 338 of Notification No. 50/2017-Cus dated 30.06.2017, of concessional rate of basic customs duty @ 5% was granted. The said entry 338 reads as under-

Sr. No.	Chapter or Heading or sub-heading or tariff item	Description of goods	Standard rate
338	6902 or 6903	<i>all goods</i>	5%

1.2 Under the impugned one Bill of Entry, the importer imported “ FCRI Ceramic Roller” and availed benefit of concessional rate of duty under the above notification by classifying the same under CTH 69039090 which is available only to refractory goods i.e. fired articles having the special property of resisting high temperatures as met in metallurgy, the glass industry etc.(e.g. of the order of 1500⁰C and higher). The declared description suggests that the impugned imported goods were meant for Ceramic industries which require fired articles having the property of resisting temperatures 1000⁰C to 1200⁰C not more than that and should be classified under CTH 69149000. The Custom Tariff Item 69149000 contains “ Other Ceramic Articles other than those of porcelain or china.”. Thus, it appeared that in the subject one Bill of Entry, the importer has wrongly classified the goods under 69039090 & availed the exemption under serial No. 338 of Notification No. 50/2017-Cus dated 30.06.2017 for imported goods i.e. “ FCRI Ceramic Roller” which is not refractory goods and only refractory goods are covered under the said CTH. Therefore, it appeared that in the impugned one Bill of Entry Basic Customs duty was liable to be charged at the prevailing tariff rate i.e. 10% .

1.3 Further, it appeared that though the importer was aware that the exemption under serial No. 338 of Notification No. 50/2017-Cus dated 30.06.2017, was not available to the impugned goods but the importer wrongly availed the exemption under said notification by mis-classifying the goods under 69039090. Thus, it appeared that the subject Bill of Entry is liable to be reassessed by rejecting the classification and classifying under 69149000 & denying the exemption. The differential Customs duty totally amounting to Rs.12,03,778/- is liable to be demanded and recovered from them under Section 28(1) of the Customs Act, 1962 along with applicable interest at appropriate rate under Section 28AA of the Customs Act, 1962. Further, it appeared that the importer has contravened the provisions of Section

17(1) of the Customs Act, 1962 and have rendered themselves liable to penalty under Section 117 of the Customs Act, 1962.

2. In view of the above, a Show Cause Notice F.No. VIII/48-382/LAR-10/18-19/Gr-III/Vinayak/MCH/2019-20 dated 17.10.2019 was issued whereby the importer M/s Vinayak Engineering, Romar Estate, Near Maliya Fatak, Mahendra Nagar Road, 8-A National Highway, Morbi-363642 (Gujarat) was called upon to show cause to the Additional Commissioner of Customs (Import), Custom House, Mundra having his office at PUB Building 5B, Adani Port, Mundra, as to why:

- (i) the classification under Custom Tariff item No. 69039090 should not be rejected and classification under Custom tariff heading No.69149000 should not be made on re-assessment.
- (ii) the exemption under serial No.338 of Notification No.50/2017-Cus dated 30.06.2017, claimed and availed by them in the one Bill of Entry detailed in Annexure-I should not be denied and the said Bill of Entry should not be reassessed under CTH 69149000.
- (iii) the differential Customs duty amounting to Rs.12,03,778/-, not paid by the importer in respect of the one Bill of Entry mentioned in Annexure-I by wrongly availing exemption under serial No.338 of Notification No.50/2017-Cus dated 30.06.2017 should not be demanded and recovered from them under Section 28(1) of the Customs Act, 1962 along with interest at appropriate rate under Section 28AA *ibid*.
- (iv) penalty should not be imposed on them under section 117 of the Customs Act, 1962.

PERSONAL HEARING

3. The personal hearing in the case was granted on dated 17.12.2019. No body appeared for the same on scheduled date and time. Thereafter, the next date of personal hearing was fixed on 03.01.2020. Shri Hitesh Dalsaniya, authorised representative of M/s Vinayak Engineering appeared for the personal hearing on 03.01.2020 wherein he submitted a letter dated 28.11.2019 along with the letter dated 09.06.2018 and reiterated the facts mentioned therein. He said that his Rollers are used for 1800^oC, however he was unable to produce any documentary evidence for that. He further said that the analysis of the rollers will be submitted in 10 days time. He further stated that he has nothing more to add.

DEFENCE SUBMISSION

4. The Noticee in their letter dated 28.11.2019 reiterated to consider their reply dated 09.06.2018, submitted to the department in the case matter before receipt of instant Show Cause Notice. They have made submissions as under-

4.1 They have imported goods "FCRI Ceramic Roller" under chapter heading 6903 as per specification and parameter mentioned below and they have correctly classified as per chapter note.

" In headings 69.02 and 69.03 refractory goods i.e. fired articles having the special property of resisting high temperatures as met in metallurgy, the glass industry, etc.(e.g. of the order of 1500⁰C and higher). According to the particular uses for which they are intended, refractory articles may also need to withstand rapid changes of temperature, be either good thermal insulators or conductors, have a low coefficient of thermal expansion, be porous or dense, resist the corrosive effects of products with which they come into contact, have a good mechanical strength and resistance to wear, etc.

However, to fall in heading 69.02 or 69.03 as refractory goods, articles must not only be capable of resisting high temperatures, they must also be designed for high temperature work. Heading 69.03 would therefore include crucibles of sintered alumina, but textile machine thread guides of the same material would fall in heading 69.09 since they are designed for clearly non-refractory uses"

4.2 In view of the above, they further submitted that they have not misclassified their imported goods and requested for waiver of the short levy notice.

DISCUSSION AND FINDINGS

5. I have carefully gone through the Show Cause Notice dated 17.10.2019, the written submissions dated 09.06.2018 and 28.11.2019 filed by the Noticee, oral submissions made during the course of hearing on 03.01.2020, various letters dated 07.01.2020, 04.02.2020, 17.02.2020 and 24.02.2020 issued to Addl. Commissioner of different Commissionerates and Dy. Commissioner (Group-III) and the available records of the case. I find that the following main issues are involved in the subject Show Cause Notice, which are required to be decided-

- (i) Whether the classification under Custom Tariff item No. 69039090 is liable for rejection and classification under Custom tariff heading No.69149000 is required to be made on re-assessment.
- (ii) Whether the exemption under serial No.338 of Notification No.50/2017-Cus dated 30.06.2017, claimed and availed by the importer in the one Bill of Entry detailed in Annexure-I of the Show cause Notice is liable to be denied and the said Bill of Entry is liable for reassessment under CTH 69149000.
- (iii) Whether the differential Customs duty amounting to Rs.12,03,778/-, not paid by the importer in respect of the one Bill of Entry mentioned in Annexure-I of the Show Cause Notice by wrongly availing exemption under serial No.338 of Notification No.50/2017-Cus dated 30.06.2017 is required to be demanded and recovered from them under Section 28(1) of the Customs Act, 1962 along with interest at appropriate rate under Section 28AA ibid.



- (iv) Whether the importer is liable for penalty under section 117 of the Customs Act, 1962.

5.1 The foremost issue before me to decide in this case is as to whether the goods imported by the noticee by declaring the same as " Ceramic Roller" are classifiable under tariff item 69039090 or under tariff item 69149000 of Customs Tariff Act, 1975 as alleged by the department in the Show Cause Notice. I find that the importer M/s Vinayak Engineering (holder of IEC No. 2412007713) had filed a Bill of Entry No.3714459 dated 23.10.2017 as detailed in Annexure-I of the Show Cause Notice for clearance of goods declared as " Ceramic Roller" and they have classified the said goods **under CTH 69039090** of first schedule of the Custom Tariff Act, 1975 and availed the concessional rate of Basic Customs duty @ 5% under serial No. 338 of Notification No. 50/2017-Cus dated 30.06.2017. In this connection, firstly I have gone through the concerned statutory provisions as provided under chapter notes as well as HSN notes of chapter 69 (Ceramic Products). The explanatory notes to the subject heading codes for tariff item 6901, 6902, 6903, and 6914 under Chapter 69 of Customs Tariff Act, 1975 reads as under-

I. Goods of Siliceous Fossil Meals or of Similar Siliceous Earths, and Refractory Goods

6901	<u>Bricks, blocks, tiles and other ceramic goods of siliceous fossil Meals (for example, kieselguhr, tripolite or diatomic) or of similar siliceous earths</u>
690100	-- Bricks, blocks, tiles and other ceramic goods of siliceous fossil Meals (for example, kieselguhr, tripolite or diatomic) or of similar siliceous earths
690100 10	--Bricks
69010020	--Blocks
69010030	-- Tiles
69010090	-- Other

6902	Refractory bricks, blocks, tiles and similar refractory ceramic constructional goods, other than those of siliceous fossil Meals or similar siliceous earths
690210	- Containing by weight, singly or together, more than 50% of the element Mg, Ca or Cr, expressed as MgO, CaO or Cr ₂ O ₃
69021010	---Magnesite bricks and shapes
690220	-Containing by weight more than 50% of alumina (Al ₂ O ₃), of silica (SiO ₂) or of a mixture of compound of these products
69022010	-- Silica bricks and shapes
69022020	-- High Alumina bricks and shapes
69022030	-- Alumina Carbon bricks and shapes
69022040	-- Silicon Carbide bricks and shapes
69022050	-- Mullite bricks
69022090	-- Other

6903	Other refractory ceramic goods (for example, retorts, crucibles, muffles, nozzles, plugs, support, cupels, tubes, pipes, sheaths and rods), <u>other than those of siliceous fossil meals or of similar siliceous earths</u>
6903 10	- Containing by weight more than 50% of graphite or other carbon or of a mixture of these products
6903 10 10	--Magnesia carbon bricks , shapes & graphitised alumina
6903 10 90	--Other
6903 20	-Containing by weight more than 50% of alumina (A2O3), of silica (SiO2) or of a mixture of compound of alumina and of silica(SiO2)
6903 20 10	-- Silicon carbide crucibles
6903 20 90	-- Other
6903 90	-- Other
6903 90 10	-- Zircon/zircon-mullite refractories
6903 90 20	-- Basalt tiles
6903 90 30	-- Ceramic fibres
6903 90 40	--Monolithics/castables (fire-clay basic silica high alumina insulating)
69039090	<u>---Refractory bricks, blocks, tiles and similar refractory ceramic constructional goods</u>
690390 90	--- Other

Whereas, the explanatory notes to the subject heading codes for tariff item 6914 under Chapter 69 of Customs Tariff Act, 1975 reads as under-

6914 Other ceramic articles

69141000 -of porcelain or china

69149000- Other

In view of the above, I find that the heading 6902 covers **Refractory bricks, blocks, tiles and similar refractory ceramic constructional goods**, other than those of siliceous fossil meals or similar siliceous earths and further the heading 6903 covers Other refractory ceramic goods (for example, retorts, crucibles, muffles, nozzles, plugs, support, cupels, tubes, pipes, sheaths and rods), **other than those of siliceous fossil meals or of similar siliceous earths** (other than those of 6901 & 6902). Further, in case of **imported goods declared as "FCRI Ceramic Roller"** and classifying the same under CTH 69039090 of first schedule of the Custom Tariff Act, 1975, I find that Ceramic Rollers widely used in Kiln for fast firing of wall tiles, floor tiles, vitrified tiles etc and needed to satisfy specific criteria such as excellent thermal shock resistance, **high alumina content with superior strength in high temperature** are akin to the refractory ceramic products included under sub-heading 6903. I also refer to the Notification No.27/2018-Customs(ADD) dated 17.05.2018 vide which the Government of India, Ministry of Finance(Department of Revenue), New Delhi has imposed

definitive anti-dumping duty on goods having description as “ Ceramic Rollers” falling under sub-heading 6903 of the First Schedule to the Customs Tariff Act,1975 originating in or exported from the People’s Republic of China and exported in to India, in order to remove injury to the domestic Industry. In view of the above facts also, I find that the Ceramic Rollers being specifically mentioned under heading 6903, their correct classification has to be under CTH 69039090 of first schedule of the Custom Tariff Act, 1975.

5.2 The Show Cause Notice has proposed that the benefit of exemption under serial No. 338 of Notification No. 50/2017-Customs dated 30.06.2017 availed by the importer by paying basic customs duty @ 5% is not available on the impugned goods i.e. “ Ceramic Roller” classified under tariff item No.69039090 of Customs Tariff Act, 1975 and they are required to pay basic customs duty @ 10%.

Relevant portion of the Notification No.50/2017-Cus dated 30.06.2017, reads as under

S. No.	Chapter or heading or sub-heading or tariff item	Description of Goods	Standard Rate	IGST	Condition No.
1	2	3	4	5	6
338	6902, or 6903	All goods	5%	-	-

From the above, I find that the concessional rate of duty under serial number 338 of the said Notification is applicable to Customs tariff items falling under 6902, or 6903, however, in respect of goods declared as “Ceramic Roller” and classified under tariff item No.69039090 of Customs Tariff Act, 1975, I find that the same are correctly classifiable under tariff item No.69039090 and the exemption under serial No.338 of Notification No. 50/2017-Cus dated 30.06.2017 is available to such goods having description as “Ceramic Roller”.

5.3 As regard proposal in the Show Cause Notice for demand of differential Customs duty along with applicable interest, since imported goods declared as “Ceramic Roller” and classified under tariff item No.69039090 of Customs Tariff Act, 1975, are correctly classifiable under tariff item No.69039090 and the exemption under serial No.338 of Notification No. 50/2017-Cus dated 30.06.2017 is available to such goods having description as “Ceramic Rollers”, I find that in respect of the goods viz. FCRI Trade mark “Ceramic Rollers” covered under Bill of Entry No.3714459 dated 23.10.2017 [**detailed at Sr. no. 01 to 04 of Annexure-I of the SCN**], **the importer M/s Vinayak Engineering is not required to pay the differential customs duty of Rs.12,03,778/-** (Rupees Twelve Lakh Three Thousand Seven Hundred Seventy Eight only) under Section 28(1) of the Customs Act,1962. Consequently, they are also not liable to pay Interest at appropriate rate on the said **amount of Rs.12,03,778/-** under provision of Section 28AA of the Customs Act, 1962.

5.4 As regard proposal in the Show Cause Notice for imposition of penalty on the importer under Section 117 of the Customs Act,1962, I find that Section 117 of the Customs Act,1962 stipulates that any person who contravenes any provisions of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his

duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding [four lakh rupees]. I further find that Section 17(1) of the Customs Act, 1962 authorises any Importer or exporter of the goods to self assess the duty leviable on the Import or export of goods. In the instant case, since the importer have correctly classified their imported goods declared as "FCRI Ceramic Roller" under tariff item No.69039090 and have correctly availed the exemption under serial No.338 of Notification No. 50/2017-Cus dated 30.06.2017, hence, I find that the penalty under Section 117 of the Customs Act, 1962 are not attracted on the importer M/s Vinayak Engineering, Romar Estate, Near Maliya Fatak, Mahendra Nagar Road, 8-A National Highway, Morbi-363642 (Gujarat).

6. In view of the forgoing discussions and findings, I pass the following order:-

ORDER

i. I drop the proceedings initiated vide the Show Cause Notice F.No. VIII/48-382/LAR-10/18-19/Gr-III/Vinayak/MCH/2019-20 dated 17.10.2019 against the importer M/s Vinayak Engineering, Romar Estate, Near Maliya Fatak, Mahendra Nagar Road, 8-A National Highway, Morbi-363642 (Gujarat).

7. This order is issued without prejudice to any other action which may be contemplated against the importer or any other person under provisions of the Customs Act, 1962 and rules/regulations framed thereunder or any other law for the time being in force in the Republic of India.


(Ajay Kumar)

Additional Commissioner,
Custom House, Mundra

F. No. VIII/48-69/Adj./ADC/MCH/2019-20

Date: 02.04.2020

BY SPEED POST

To
M/s Vinayak Engineering,
Romer Estate, Near Maliya Fatak,
Mahendra Nagar Road,
8-A National Highway,
Morbi-363642, Gujarat



Copy to:

1. The Commissioner of Customs, Custom House, Mundra.
2. The Deputy/Assistant Commissioner (RRA), Custom House, Mundra.
3. The Deputy/Assistant Commissioner (TRC), Custom House, Mundra.
4. The Deputy/Assistant Commissioner (EDI), Custom House, Mundra.
5. The Deputy/Assistant Commissioner (GR-III), Custom House, Mundra.
6. The Deputy/Assistant Commissioner (Audit), Custom House, Mundra.
7. Guard File