



**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.	VIII/48-45/Adj/ADC/MCH/2017-18
B	Order-in-Original No.	MCH/ADC/AS/109/2018-19
C	Passed by	Shri Amarjeet Singh Additional Commissioner of Customs, Custom House, AP & SEZ, Mundra
D	Date of Order	19.02.2019
E	Date of Issue	19.02.2019
F	SCN No. & Date	F. No. VIII/48-295/MISC/MP SCN/MP & SEZ/2013-14 dated 19.05.2014
G	Noticee / Party / Importer / Exporter	1. M/s. Colorobbia Chemical India Pvt. Ltd., Plot No. SM 21, Sanand Engineering Estate, GIDC, Sanand-II (BOL), Sanand, Ahmedabad-382110

1. यह अपील आदेश संबंधित 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 रोड, अहमदाबाद 380 009”  
“THE COMMISSIONER OF CUSTOMS (APPEALS), KANDLA  
Having his office at 7<sup>th</sup> 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/- रुपये 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 ज्ञापन 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.

Subject:- SCN F. No. VIII/48-295/MISC/IMP SCN/MP & SEZ/2013-14 dated 19.05.2014 issued to M/s. Colorobbia Chemical India Pvt. Ltd., Plot No. SM 21, Sanand Engineering Estate, GIDC, Sanand-II (BOL), Sanand, Ahmedabad-382110.

### **Brief facts of the case:**

Based on an Intelligence gathered by the officers of Directorate of Revenue Intelligence, Regional Unit, Gandhidham (hereinafter referred to as "DRI") indicated that some importers were importing Printing Ink which is used in Digital Inkjet Printing Machines for printing on Ceramic Tiles (hereinafter also referred to as "Inkjet Ink"/"Imported Goods"). The Inkjet Ink is appropriately classifiable under Customs Tariff Heading 3215. Intelligence gathered indicated that, various importers used to mis-declare its description as Ceramic Colour, Ceramic Pigment, raw material for ceramic tile plant, Colour, Pigment or similar wordings in the Bills of Entry before the Customs and were wrongly classifying the same under Customs Tariff Item 32071030/32071090 etc. with intention to evade payment of appropriate amount of customs duty. Effective rate of Basic Customs Duty on goods covered under Custom Tariff Heading 3207 was 7.5% adv. as per Sr. No. 208 of Notification No.12/2012-Cus dated 17.03.2012. Some of the Importers were also claiming greater exemption and paying effective rate of Basic Customs @ 5% Adv. under Sr. No. 210 of Notification No. 12/2012-Cus dated 17.03.2012 by classifying the imported goods under tariff item 32071040. Exemption under Sr. No. 210 of Notification No. 12/2012-Cus dated 17.03.2012 is admissible to "Ceramic Colours" falling under CTH 32071040.

2. Based on the above intelligence, it was noticed that some consignments was cleared by M/s. Colorobbia Chemicals India Pvt. Ltd., Ahmedabad at Mundra Port by following above mentioned modus operandi.

3. During the course of inquiry, it was revealed that the importer had filed a Bill of Entry No, 2931558 dated 07.08.2013 at Custom House, Mundra through CHA M/s. Aditya Marine Limited. The said live consignment of the importer was examined under Panchnama dated 12.08.2013. During the course of examination, it was found that the said consignment consisted of three types of items viz. 17000 Kgs of Pigments, 400 Kgs of empty plastic drums/boxes and 2480 Kgs. of printing ink. In the said Bill of Entry, the description of imported printing ink was declared as Pink/Brown/Blue/Black/Yellow Colour (Material for Ceramic Use). Since the Importer had not declared the "Printing Ink" correctly in their import documents and had not classified the said goods under their appropriate Customs Tariff Item, 2480 Kgs of Printing Ink valued at Rs 34.54 Lakhs was placed under seizure as per the provisions of Section 110 (1) of the Customs Act, 1962 under Panchnama dated 12.08.2013. Representative samples of the said goods were also taken under the said Panchnama. From the documents submitted by the importer, it was revealed that prior to import of subject consignment, M/s. Colorobbia Chemicals India Pvt Ltd., Ahmedabad had imported three consignments during year 2012 which were cleared under

Bills of Entry No. 7984366 dated 19.09.2012, 8348443 dated 30.10.2012 and 8420100 dated 06.11.2012. Investigation of DRI also revealed that M/s. Colorobbia Chemicals India Pvt Ltd., Ahmedabad was getting cleared Ceramic Printing Ink at Customs Air Cargo Complex ("ACC" for short), Ahmedabad, ACC, Mumbai and Customs House Nhava Sheva, Mumbai. All these imports were being sourced from M/s. Colorobbia India Pvt. Ltd., Ahmedabad had used different terminology for clearing the imported goods in the Bill of Entry viz Ink (Material for Ceramic Use), Colour (Material for Ceramic Use), Colour, Material for Ceramic Use-Colour, Material for Ceramic Use-Ink, Ink (Ceramic Stain) etc. It was also revealed from the documents that the importer was classifying the imported goods under tariff item 32071030, 32071040 & 32071090. The importer was paying effective Basic Customs Duty ("BCD" for short) @ 5% at the CH Mundra (live consignment), Customs Air Cargo Complex Mumbai and Customs House Nhava Sheva by claiming exemption under Sl. No. 210 of Notification No. 12/2012-Cus dated 17.03.2012 and was paying effective Basic Customs Duty ("BCD" for Short) @ 7.5% at the CH Mundra (previous consignment) and Customs Air Cargo complex Ahmedabad by claiming exemption under Sr. No. 208 of Notification No.12/2012-Cus dated 17.03.2012. M/s. Colorobbia Chemicals India Pvt Ltd., Ahmedabad is a related company of the supplier M/s. Colorobbia Espana S.A and their case for deciding whether the relationship with supplier had affected Import Price or not has been registered with Special Valuation Branch, Mumbai. As a result, the import affected by M/s. Colorobbia Chemicals India Pvt Ltd., Ahmedabad are being assessed provisionally under the provisions of Section 18 of Customs Act, 1962 read with Circular No. 11/2001 dated 23.02.2001.

*(The present SCN was issued in respect of four consignments which were got cleared at CH Mundra under Bills of Entry No. 7984366 dated 19.09.2012, 8348443 dated 30.10.2012 and 8420100 dated 06.11.2012 and 2931558 dated 07.08.2013. Out of the above four consignments, the consignment under B/E No. 2931558 dated 07.08.2013 was seized under Section 110 (1) of the Customs Act, 1962. The imports, except those covered under the above mentioned four Bills of Entry were being investigated separately.)*

**4. During the course of investigation, statements of following persons were recorded:**

- (i) Shri Anil Jayeshbhai Chauhan, Account Executive in M/s. Colorobbia Chemicals India Pvt Ltd., Ahmedabad
- (ii) Shri Rajashekhar Shanmukhappa Shettar, Director of M/s. Colorobbia Chemicals India Pvt Ltd., Ahmedabad.
- (iii) Shri Manish Vinodbhai Kamdar, Customs Executive in CHA M/s. Aditya Marine Limited, Gandhidham.
- (iv) Shri Harichand Laxmichand Tharwani, F Card Holder and Director in

CHA M/s. Aditya Marine Limited, Gandhidham.

- (v) Shri Balubhai Manjibhai Patel, Customs I Card Holder in CHA M/s. D P Logistics Private Limited, Gandhidham.

5. M/s. Colorobbia Chemicals India Pvt. Ltd., Ahmedabad made payment of differential duty amounting to Rs. 3,42,046/- vide Challan No. MP & SEZ/1746/2013-14 dated 23.08.2013. Considering their request, the seized goods were released provisionally by Customs Authorities.

6. Representative samples were sent to Customs Laboratory, CH Kandla vide Test Memo No. 10/2013-14 and 11/2013-14 both dated 05.09.2013 seeking opinion regarding composition and characteristics of the subject import goods and to ascertain whether the product was 'color' or 'Ink'. The Custom Laboratory, CH Kandla, in respect of the import goods opined (for test memo No. 10/2013-14) as *"The sample is in the form of pink color thick liquid. It is a preparation containing inorganic oxide (Pigment) in solvent."* (No. 435/05.09.2013) and for test memo No. 11/2013-14) as *"The sample is in the form of blue colored thick liquid. It is a preparation containing inorganic oxide (Pigment) insolvent."* (No.436/05.09.2013). The composition of the Imported Goods as opined by the Customs Laboratory CH Kandla, matched with basic composition of 'Printing Inks' as explained in the Explanatory Notes to Harmonized Commodity Description and Coding System under CTH 3215 and indicated that the imported goods were similar in composition to that of Inks. Second set of samples was sent to Central Revenues Control Laboratory (CRCL for short), New Delhi for testing and seeking further opinion vide Test Memo No. 22/2013-14 and 23/2013-14 both dated 26.11.2013. The CRCL, New Delhi in its Test Report C. No. 35/CUS/CRCL/2013/CL-626 DRI dated 02.12.2013 issued on 27.12.2013, in respect of the one sample (Test memo No. 22/2013-14) opined *"the sample is in the form of pink coloured viscous liquid. It is a preparation based on Inorganic coloring matter, glycolic bodies, phthalate, fatty matter & organic solvent. Non-volatile residue = 45.2%, Ash content = 24.1%. Above analytical finding reveals that such compositions find mentioned to be used as Printing Ink. However, actual use of the product may be ascertained. Literal evidence reveals that such ink can be used in the Inkjet Printers on surface having clay coating."* Similarly, Test Report C. No. 35/CRCL/2013/CL-627 (DRI) dated 02.12.2013 of CRCL, New Delhi issued on 27.12.2013 in respect of Second Sample (Forwarded vide Test Memo No. 23/2013-14) opined *"the sample is in the form of violet coloured viscous liquid. It is preparation based on Inorganic colouring matter, glycolic bodies, phthalate, fatty matter & organic solvent. NVR = 50.4%, Ash content = 25.2 %.* Above analytical finding reveals that such compositions find mentioned to be used as Printing Ink. Actual use of the product

may be ascertained. Literal evidence reveals that such ink can be used in the Inkjet Printers on surface having clay coating." The opinion of the CRCL, New Delhi, therefore, independently confirmed that the subject Import Goods are Printing Ink which could be used in Inkjet Printers for printing on Ceramic Surfaces.

**7. Mis-declaration and Mis-classification of Ceramic Printing Ink and evasion of Customs Duty: Scheme of classification and declaration of Import goods in the Import Documents.**

**7.1** Inks (including Printing Ink, Drawing Ink, Writing Ink and Other Inks) are specifically covered under CTH" 3215. The exact wordings of 'Inks' covered under CTH 3215 are "*Printing Ink, writing ink or drawing and other inks, whether or not concentrated or solid*". The items covered under CTH 3215, when imported, attract Basic Customs Duty @ 10% ad valorem. However, the "Inks" imported by M/s. Colorobbia Chemicals India Pvt. Ltd., Ahmedabad have been classified under CTH 3207 (32071030/32071040) paying effective BCD @ 7.5 % or 5%. Sub-heading 320710 covers "*Prepared pigments, prepared pacifiers and prepared colours and similar preparations*". The "Ceramic Printing Inks" imported at Mundra Port in all the four consignments have been wrongly classified under Customs Tariff Item 32071030/32071040. In respect of goods covered under invoice No. VGR/33000512 dated 12.07.2013 (Bill of Entry No. 2931558 dated 07.08.2013) the goods were also mis-declared in respect of description. The same goods were described correctly as "Inks" in remaining three consignments imported at Mundra Port during year 2012. Therefore, statements of both Shri Anil Jayeshbhai Chauhan, Account Executive in M/s. Colorobbia Chemicals India Pvt Ltd. and Shri Rajshekhar Shettar the only Indian Director in M/s. Colorobbia Chemicals India Pvt. Ltd., Ahmedabad, were recorded under Section 108 of Customs Act, 1962. These statements also reveal that M/s. Colorobbia Chemicals India Pvt. Ltd., Ahmedabad knew the product as "Ceramic Printing Ink" and that the same was meant for use in Digital Printing Machines for printing on Ceramic Tiles. They also knew that the Digital Printing Machines function on Inkjet Technology similar to Inkjet Printers. Even though the importer knew that the imported product was Ceramic Printing Ink; that it was being correctly declared as "Ink" in the documents pertaining to earlier Imports effected at Mundra Port during 2012; that it was meant for use in Digital Printing Machines for printing on Ceramic Tiles; the said Digital Machines function on the same principle on which the Inkjet Printers function, they approved the checklist for Bill of Entry No. 2931558 dated 07.08.2013 filed through CHA M/s. Aditya Marine Limited in which the goods were mis-declared. They also approved the mala-fide claim for exemption from Customs Duty under Sr. No. 210 of Notification No. 12/2012-

Cus dated 17.03.2012, which was specifically admissible to "Ceramic Colours". The CHA M/s. Aditya Marine Limited was equally guilty of mis-declaration of description of Import Product as "Colour" and claim of exemption under Sr No. 210 of Notification No. 12/2012-Cus dated 17.03.2012. Shri Manish Kamdar who prepared Checklist for Bill of Entry No. 2931558 dated 07.08.2013, had already attended three consignments of same product of same importer when he was working with M/ s. D P Logistics Private Limited. He was aware that the subject import item was "Ceramic Ink" and "Ceramic Color" and that in the earlier 03 Bills of Entry the same Item was cleared by paying BCD @ 7.5%. Despite knowing this the CHA proposed wrong description in the Checklist and also proposed BCD at lesser rate (5%) under Sr. No. 210 of Notification No. 12/2012-Cus dated 17.03.2012 which was admissible only to "Ceramic Colors".

#### **8. CONFISCATION OF GOODS**

M/s. Colorobbia Chemicals India Pvt. Ltd., Ahmedabad has imported total four consignments of Ceramic Printing Inks at Mundra Port. Three consignments were imported by them in the last quarter 2012 and got cleared through CHA (now Customs Broker) M/s. D P Logistics Private Limited. The description of "Ceramic Printing Ink" was correctly declared in the Import Invoices and also in the respective Bills of Entry filed for their clearance for home consumption even though it was not correctly classified under CTH 3215. However, in the fourth consignment imported under invoice No. VGR33000512 dated 12.07.2013 the Ceramic Ink was mis-declared as "Colour" in the Invoice as well as in the Bill of Entry No. 2931558 dated 07.08.2013 filed through M/s. Aditya Marine Limited for seeking clearance for home consumption. It has become evident that the Importer M/s. Colorobbia Chemicals India Pvt. Ltd., Ahmedabad as well as CHA M/s. Aditya Marine Limited and their employees were aware that the subject goods (2480 Kgs Ink) which were mis-declared as "Colour" were not Colours but "Ceramic Printing Ink". Shri Rajshekhar Director and country head of M/s. Colorobbia Chemicals India Pvt. Ltd., Ahmedabad knew that Pigment/colour and Ceramic Ink were entirely different categories of goods. Shri Manish Kamdar (now the employee of M/s. Aditya Marine Limited) had attended three consignments of Ceramic Ink of same Importer M/s. Colorobbia Chemicals India Pvt. Ltd., Ahmedabad when he was working with CHA M/s. D P Logistics Private Limited. Despite knowing the clear cut identity of the imported goods CHA M/s. Aditya Marine Limited proposed the same incorrect description of imported goods as "colour" in the Checklist and Importer M/s. Colorobbia Chemicals India Pvt. Ltd., Ahmedabad approved the said incorrect description in the Checklist for Bill of Entry No. 2931558 dated 07.08.2013. The mis-declaration was intentional because not only the

description and Customs Classification of the goods was declared incorrect in the Bill of Entry but exemption from BCD specifically admissible to "Ceramic Colours of CTH 32071040" was claimed for the subject goods. Even though the assessments of the importer M/s. Colorobbia Chemicals India Pvt. Ltd., Ahmedabad are being done on the provisional basis as per provisions of Section 18 of Customs Act, 1962, however, neither Importer nor CHA had applied for assessment on First Check basis which evidences that they were sure about the identity of the goods. This act of mis-declaration of the subject Import product i.e. Ceramic Printing Ink as Colour has rendered 2,480 Kgs of "Ceramic Printing Inks" valued at Rs. 34,54,030/-liable for confiscation under Section 111(m) of Customs Act, 1962.

**9. Demand of Differential Duties of Customs short levied and short paid:** Facts and evidences, as discussed above it is reveal that the importer was aware of the correct description and use of the Ceramic Printing Inks being imported by them from M/s. Colorobbia Espana, Spain. Shri Rajshekhar in his statement recorded on 19.08.2013 has admitted that he subject Import product being imported by them from M/ s. Colorobbia Espana, Spain was "Ceramic Printing Ink". He was also aware of the precise difference between "Ceramic Ink and Pigment (Colour)" and their respective uses. He even knew how the codes of these two products are derived and the manufacturing/compositions of these items. The importer was also aware that the Ink imported by them was being used in Digital Printing Machines for obtaining prints on Ceramic Tiles using Inkjet Technology. The Test report of Customs Laboratory, Kandla and CRCL New Delhi have precisely confirmed that the subject goods are Printing Ink which can be used in Inkjet Printer for printing on surfaces having clay coating. Printing Inks and other Inks are specifically covered under CTH 3215. The Ceramic Printing Ink thus would merit classification under CTH 32151190. All the items of CTH 3215 including that of CTH 32151190 attract BCD @ 10% adv. However, with intent to evade payment of applicable duties of customs the Importer mis- stated the description of Import goods as "Colour" in Bill of Entry No. 2931558 dated 07.08.2013 filed through CHA M/s. Aditya Marine Limited and mis-classified them under CTH 32071040 applying BCD @5% as per Sr No. 210 of Notification No.12/2012 dated 17.03.2012. In other three Bills of Entry filed through CHA M/s. D P Logistics Private Limited the goods were not mis-declared but were still mis-classified under CTH 3207 where BCD @ 7.5% was levied. Importer has approved Checklists of Bills of Entry wherein the goods were described as "Colour" instead of "Inks" and Customs CTH has been mentioned as "3207" instead of "3215". All the above Bills of Entry were assessed provisionally.

The above discussed facts and evidences show that the Importer resorted to willful mis-declaration with an ulterior motive of evading payment of the applicable duty on "Ceramic Printing Ink" in Bill of Entry No. Bill of Entry No. 2931558 dated 07.08.2013. They even arranged for mis-declaration of the description of the goods in the Import Invoice No. VGR/33000512 dated 12.07.2013 and Bill of Entry No. 2931558 dated 07.08.2013. This act clearly shows willful mis-declaration on their part. Hence, provisions of Section 28(4) of Customs Act, 1962. Further, as the said Bill of Entry were assessed provisionally, the differential duty is liable to be recovered by assessing the said Bill of Entry finally under Section 18 (3) of Customs Act, 1962. Thus, the differential duty in respect of Bill of Entry No. 2931558 dated 07.08.2013 is liable to be recovered under Section 28 (4) of Customs Act, 1962 read with Section 18 (3) of Customs Act, 1962, in respect of 2480 Kgs of Ceramic Inks. Applicable interest as per provisions of Section 28 AA (erstwhile Section 28 AB) ibid read with provisions of Section 18 (5) of Customs Act, 1962 is also liable to be demanded and recovered on the said differential amount of duty. In other three Bill of Entry filed through CHA M/s. D P Logistics Private Limited also the Importer M/s. Colorobbia Chemicals India Pvt. Ltd., Ahmedabad has paid BCD @7.5 % by mis-classifying the goods under Tariff Sub Heading 3207 even though their description was correctly declared as "Ink". The details of duty actually paid, that is required to be paid and the resulting differential duty (column No. 18) evaded by importer M/s. Colorobbia Chemicals India Pvt. Ltd., Ahmedabad which is liable to be recovered from them is detailed in (Annexure A) attached to the Notice. The differential Customs duty amounting to Rs. 2,07,198/- leviable on Ceramic Printing Ink imported and got cleared under Bill of Entry No. 2931558 dated 07.08.2013 and not paid by M/s. Colorobbia Chemicals India Pvt. Ltd., Ahmedabad is therefore, liable to be demanded and recovered from them as per provisions of Section 28 (4) of the Customs Act 1962 read with provisions of Section 18 (3) of Customs Act, 1962 along with applicable interest as per provisions of Section 28 AA (erstwhile Section 28 AB) ibid read with provisions of Section 18 (5) of Customs Act, 1962. Similarly differential Customs duty aggregating to Rs. 1,34,848/- leviable on Ceramic Printing Ink imported and got cleared under three Bills of Entry bearing Nos 7984366 dated 19.09.2012, 8348443 dated 30.10.2012 and 8420100 dated 06.11.2012 and not paid by M/s. Colorobbia Chemicals India Pvt. Ltd., Ahmedabad, is therefore, liable to be demanded and recovered from them as per provisions of Section 28 (1) of the Customs Act 1962 read with provisions of Section 18 (3) of Customs Act, 1962 along with applicable interest as per provisions of Section 28 AA (erstwhile Section 28 (AB) ibid read with provisions of Section 18 (5) of Customs Act, 1962.



## **10. Roles of various persons and penalties on them**

### **10.1 Role of M/s. Colorobbia Chemicals India Pvt. Ltd., Ahmedabad and Shri Rajshekhar:**

The goods imported by M/s. Colorobbia Chemicals India Pvt. Ltd., Ahmedabad were "Ceramic Printing Inks" and were correctly classifiable under CTH 32151190. It has also become evident that the Import goods were known to supplier and importer as "Ceramic Printing Inks/Inks". However, the subject import goods "Ceramic Printing Inks" have been mis-declared as Colour in Bill of Entry No. 2931558 dated 07.08.2013, wrongly classified under CTH 3207 1040 and BCD was paid @ 5%. The willful mis-declaration in the Bill of Entry No. 2931558 dated 07.08.2013 by M/s. Colorobbia Chemicals India Pvt. Ltd., Ahmedabad has rendered 2480 Kgs of "Ceramic Printing Ink" covered therein liable to confiscation under Section 111 (m) of the Customs Act, 1962 and M/s. Colorobbia Chemicals India Pvt. Ltd., Ahmedabad liable to penalty under Section 112 (a) of the Customs Act, 1962. The above mentioned act of mis-declaration was done with intention to evade payment of appropriate customs duty on the above mentioned goods. By making wrong declaration of goods and mis-classification M/s. Colorobbia Chemicals India Pvt. Ltd., Ahmedabad has attempted to evade Customs Duty amounting to Rs. 2,07,198/-. For the above acts of omissions and commissions, M/s. Colorobbia Chemicals India Pvt. Ltd., Ahmedabad have also rendered themselves liable to penalty under Section 114A of the Customs Act, 1962.

Shri Rajshekhar is working as Director and Country head of M/s. Colorobbia Chemicals India Pvt. Ltd, Morbi. He has looked after the work of purchase and import of impugned "Ceramic Printing Inks" from M/s. Colorobbia Espana, Spain. He was the main person involved in the process of negotiating with the suppliers and also in approving mis-statement of description of imported goods. Similarly Shri Anil Chauhan working as Account Executive in M/s. Colorobbia Chemicals India Pvt. Ltd., Ahmedabad looked after purchase of Ceramic Inks. He was also involved in approving correctness of Checklist for filing Bill of Entry. He also knew that the subject goods imported and sought clearance under Bill of Entry No. 2931558 dated 07.08.2013 were "Ceramic Inks" and meant to be used in Ceramic Digital Printing Machines for printing on Ceramic Tiles. Despite being aware of the precise difference in the "Ceramic Printing Ink" and "Ceramic Colour" both Shri Rajshekhar and Shri Anil Chauhan approved the mis-declaration and mis-classification of goods and claim for exemption from duty in Bill of Entry No. 2931558 dated 07.08.2013 which was not admissible to subject goods. These acts on the part of Shri Rajshekhar Shettar and Shri Anil Chauhan have

rendered the subject import Goods "Ceramic Printing Inks" liable for confiscation as per provisions of Section 111 (m) of the Customs Act, 1962 and Shri Rajshekhar Shettar and Shri Anil Chauhan liable to penalty under Section 112(a) of the Customs Act, 1962.

**10.2 Role of CHA (now Customs Broker) M/s. Aditya Marine Limited and Shri Manish Kamdar (H Card Holder) in M/s. Aditya Marine Limited:-**

The Bill of Entry No. 2931558 dated 07.08.2013 for seeking clearance 2480 Kgs of Ceramic Printing Ink imported under Invoice No VGR33000512 dated 12.07.2013 by M/s. Colorobbia Chemicals India Pvt. Ltd., Ahmedabad was filed through M/s. Aditya Marine Limited. Shri Manish Kamdar H Card Holder and employee of M/s. Aditya Marine Limited who handled the clearance of consignment and prepared checklist had already attended three similar consignments imported by same importer M/s. Colorobbia Chemicals India Pvt. Ltd., Ahmedabad during last quarter of 2012 when was working with CHA M/s. D P Logistics Private Limited. In all those three Bills of Entry filed for clearance of the said three consignments the "Ceramic Printing Ink" was correctly declared as "Ink". Otherwise also he had discussed about the product and its use in the Digital Printing Machine for printing on Ceramic Tiles. A CHA is duty bound to exercise due diligence to ascertain the correctness of any information with reference to the work related to clearance of cargo from Customs. Instead of doing so they abetted in the act of mis-declaring and mis-classifying the impugned goods. Further they have also failed to advise his client M/s. Colorobbia Chemicals India Pvt. Ltd., Ahmedabad to comply with the provisions of the Act and they also failed to bring the matter of non-compliance of mis-declaration and mis-classification of the import goods by Importer to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Custom in terms of Regulation 13 (d) of Custom House Agents Licencing Regulation, 2004 (*now Regulation 11 (d) of Customs Brokers Licencing Regulations, 2013*).

The above discussed acts of commission and omission on the part of M/s. Aditya Marine Limited have rendered themselves liable to penalty under Section 112(a) of the Customs Act, 1962. They have also rendered themselves liable for action under Customs House Agents Licensing Regulations, 2004 read with Customs Brokers Licencing Regulations, 2013. Further Shri Manish Kamdar has admitted in his statement that he was handling work pertaining to import of M/s. Colorobbia Chemicals India Pvt. Ltd., Ahmedabad. As stated above he had also attended three consignments of same product imported by the same Importer when he was working with CHA M/s. D P Logistics Private Limited. Ceramic Printing Ink was correctly declared in those three consignments as "Ink". Despite having specific knowledge about the description of Imported goods and its use he proposed mis-declaration of description of imported goods

in the Checklist prepared for Bill of Entry No. 2931558 dated 07.08.2013 and mis-classified the same under CTH 32071040. The above discussed acts of commission and omission on the part of Shri Manish Kamdar, H Card Holder and partner in M/s. Aditya Marine Limited have liable to penalty under Section 112(a) of the Customs Act, 1962.

**10.3 Role of M/s. D P Logistics Private Limited, CHA (now Customs Broker):**

M/s. D P Logistics Private Limited arranged clearance of three consignments Ceramic Printing Ink imported by M/s. Colorobbia Chemicals India Pvt. Ltd., Ahmedabad during the last quarter of year 2012. The imported goods covered under the said three consignments were correctly declared as "Inks". Further they also knew that the import product "Ink" was meant for use in Digital Printing Machine for printing on Ceramic Tiles. It was sufficient to treat the goods as Printing Ink and correctly classify the same under CTH 32151190. However CHA M/ s. D P Logistics Private Limited mis-classified the goods under CTH 32071040/32071030 and levied BCD @ 7.5% instead of 10% which was leviable on the goods had the same been classified correctly under CTH 32151190. From the statement of Shri Manish Kamdar and Shri Balubhai Manjibhai Patel, Customs I Card Holder in CHA M/s. D P Logistics Private Limited, it has emerged that M/s. D P Logistics Private Limited failed to do their duty and became party to the evasion of customs duty. A CHA (now Customs Broker) is duty bound to exercise due diligence to ascertain the correctness of any information with regard to the work related to clearance of cargo from Customs. Instead of doing so they abetted in the act of misclassifying the impugned goods. Further they have also failed to advise his client M/s. Colorobbia Chemicals India Pvt. Ltd., Ahmedabad to comply with the provisions of the Act and they also failed to bring the matter of non-compliance of mis-declaration and mis-classification of the import goods by Importer to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Custom in terms of Regulation 13 (d) of Custom House Agents Licencing Regulation, 2004 (now Regulation 11 (d) of Customs Brokers Licencing Regulations, 2013) and thus have rendered themselves liable for action under Customs House Agents Licencing Regulations, 2004 read with Customs Brokers Licencing Regulations, 2013.

**11.** Therefore, M/s. Colorobbia Chemicals India Pvt Ltd., situated at 201, Samaan-II, Nr Reliance Petrol Pump, 100 ft Road, Prahaladnagar, Satellite, Ahmedabad was issued a show cause notice No. VIII/48-295/MISC/IMP SCN/MP & SEZ/2013-14 dated 19.05.2014 calling upon them to show cause to the Joint Commissioner of Customs, Mundra Port as to why:

- (a) The classification of the "Ceramic Printing Ink" cleared for home consumption under Bills of Entry bearing Nos. 7984366 dated 19.09.2012, 8348443 dated 30.10.2012, 8420100 dated 06.11.2012 and 2931558 dated 07.08.2013 under CTH 32071030/ 32071040 should not be rejected and the same be re-classified under CTH 32151190. The Bills of Entry which were earlier provisionally assessed, why should not be finally assessed accordingly, under Section 18 of Customs Act, 1962.
- (b) The differential customs duty amounting to Rs. 2,07,198/- {(Rupees Two Lakhs Seven Thousand One Hundred Ninety Eight only) as mentioned at Sr No. 04 of Annexure A to the Notice} leviable on the "Ceramic Printing Ink" covered under Bill of Entry No. 2931558 dated 07.08.2013 should not be demanded and recovered from them under Section 28 (4) of the Customs Act, 1962 read with provisions of Section 18 (3) of Customs Act, 1962, along with applicable interest under Section 28 (erstwhile Section 28 AB) of the Customs Act, 1962 Section 18 (5) of the Customs Act, 1962.
- (c) The differential amount of customs duty aggregating to 1,34,848/ {(Rupees One Lakh Thirty Four Thousand Eight Hundred Forty Eight only) as mentioned at Sr. No. 01 to 03 of Annexure A to the Notice} leviable on the "Ceramic Printing Ink" covered under Bills of Entry 7984366 dated 19.09.2012, 8348443 dated 30.10.2012 and 8420100 dated 06.11.2012 should not be demanded and recovered from them as per provisions of Section 28(1) of the Customs Act, 1962 read with provisions of Section 18 (3) of Customs Act, 1962, along with applicable interest under Section 28 AA (erstwhile Section 28 AB) of the Customs Act, 1962 read with provisions of Section 18 (5) of the Customs Act, 1962.
- (d) Differential duty amounting to Rs. 3,42,046/- paid by M/s. Colorobbia Chemicals India Pvt. Ltd., Ahmedabad vide TR-6 Challan No. MP & SEZ/1746/2013-14 dated 23.08.2013 should not be adjusted and appropriated against their duty liability arising as per sub-Para (c) above.
- (e) 2480 Kgs of Ceramic Printing Ink valued at Rs. 34,54,030/- sought clearance under Bill of Entry No. 2931558 dated 07.08.2013 should not be confiscated under Section 111 (m) of Customs Act, 1962.
- (f) 4095 kgs of Ceramic Printing Ink valued at Rs. 44,95,992/- already cleared under Bills of Entry Nos. 7984366 dated 19.09.2012, 8348443 dated 30.10.2012 and 8420100 dated 06.11.2012 should not be confiscated under Section 111 (m) of Customs Act, 1962.
- (g) Penalty should not be imposed on them under Section 114A and Section 112 (a) of the Customs Act, 1962, for the reasons discussed above.

**11.2** M/s. Aditya Marine Limited, Room No.11, 12 and 13, Dirajh Chamber,

Plot No. 36, Sector 9A, Gandhidham, Shri Rajshekhar Shettar, Director and Country Head of M/s. Colorobbia Chemicals India Pvt. Ltd., Ahmedabad and Shri Manish Kamdar, Customs H Card Holder and working as Customs Executive in CHA M/s. Aditya Marine Limited was issued a show cause notice No. VIII/48-295/MISC/IMP SCN/MP & SEZ/2013-14 dated 19.05.2014 calling upon them to show cause to the Joint Commissioner of Customs, Mundra Port as to why:

- (a) Penalty should not be imposed on them under Section 112 (a) of the Customs Act, 1962, for the reasons discussed above.

**12.** The above SCN was adjudicated vide OIO No. **MP & SEZ/ADC/RKC/182/2015-16 dated 31.03.2016** and passed the following orders

- (a) reject the classification of the "Ceramic Printing Ink" cleared for home consumption under Bills of Entry bearing No. 7984366 dated 19.09.2012, 8348443 dated 30.10.2012, 8420100 dated 06.11.2012 and 2931558 dated 07.08.2013 under CTH 32071030/32071040 and order the same to be re-classified under CTH 32151190. The Bill of Entry which were earlier provisionally assessed be finally assessed accordingly, under Section 18 of the Customs Act, 1962.
- (b) confirm the demand of the differential customs duty amounting to Rs. 2,07,198/- {(Rupees Two Lakhs Seven Thousand One Hundred Ninety Eight only) as mentioned at Sr. No. 04 of Annexure A to the Notice} leviable on the "Ceramic Printing Ink" covered under Bill of Entry No. 2931558 dated 07.08.2013 and order to recover from M/s. Colorobbia Chemical India Pvt. Ltd., Ahmedabad under Section 28(4) of the Customs Act, 1962 read with provisions of Section 18(3) of the Customs Act, 1962, alongwith applicable interest under Section 28AA (erstwhile Section 28AB) of the Customs Act, 1962 read with Section 18(5) of the Customs Act, 1962.
- (c) confirmed the demand of the differential amount of Customs duty aggregating to Rs. 1,34,848/- {( Rupees One Lakh Thirty Four Thousand Eight Hundred Fourth Eight only) as mentioned at Sr. No. 01 to 03 of the Annexure A to the Notice} leviable on the "Ceramic Printing Ink" covered under Bill of Entry No. 7984366 dated 19.09.2012, 8348443 dated 30.10.2012 and 8420100 dated 06.11.2012 and order to recover from M/s. Colorobbia Chemical India Pvt. Ltd., Ahmedabad under Section 28(1) of the Customs Act, 1962 read with provisions of Section 18(3) of the Customs Act, 1962, along with applicable interest under Section 28AA

(erstwhile Section 28AB) of the Customs Act, 1962 read with Section 18(5) of the Customs Act, 1962.

- (d) appropriate differential duty amounting to Rs. 3,42,046/- paid by M/s. Colorobbia Chemical India Pvt. Ltd., Ahmedabad vide TR-6 Challan No. MP & SEZ/1746/2013-14 dated 23.08.2013 and order to adjust against their duty liability arising as per sub-para (b) & (c) above.
- (e) hold the 2480 Kgs of Ceramic Printing Ink value at Rs. 34,54,030/- sought clearance under Bill of Entry No. 2931558 dated 07.08.2013 and 4095 Kgs Ceramic Printing Ink value at Rs. 44,95,992/- already cleared under Bill of Entry Nos. 7984366 dated 19.09.2012, 8348443 dated 30.10.2012 and 8420100 dated 06.11.2012 liable for confiscation under Section 111(m) of the Customs Act, 1962, however refrain from confiscation in absence of the availability of the goods and impose redemption fine of Rs. 4,00,000/- as the goods are represented by the bond and RF is imposable as per law held by the hon'ble Apex Court in case of Weston Components Ltd.,-2000(115) ELT 278 (SC) and Large Banch of CESTAT in case of Shiv Kripa Ispat Pvt. Ltd/-2009 (235) ELT 623 (Tri-LB).
- (f) impose a penalty of Rs. 3,42,046/- on the importer under Section 114A of the Customs Act, 1962 and refrain from imposing of any penalty under Section 112 in view of the proviso to the Section 114A of the Customs Act, 1962. However, if the Customs duty and interest confirmed as discussed above is paid by the importer within 30 days from the date of communication of this order, the amount of penalty stands reduced to 25% in terms of provisions of Section 114A of the Customs Act, 1962.
- (g) impose penalty of Rs. 50,000/- on Shri Rajshekhar Shettar, Director & Country head of the importer under Section 112(a) of the Customs Act, 1962.
- (h) impose penalty of Rs. 25,000/- under Section 112(a) of the Customs Act, 1962 on Shri Manish Kamdar, now working with Customs Broker M/s. Aditya Marine Ltd., who earlier was with Customs Broker, M/s. D P Logistics Pvt. Ltd., Gandhidham.
- (i) do not impose any penalty on Customs Brokers M/s. Aditya Marine Ltd., Gandhidham and M/s. D P Logistics Pvt. Ltd., Gandhidham.

**13.** Aggrieved by aforesaid decision of the Additional Commissioner, M/s. Colorobbia Chemical India Pvt. Ltd., Ahmedabad (Noticee No. 1) filed an appeal before the Commissioner of Customs (Appeal), Ahmedabad.

**14.** The aforesaid Appeals were decided by the Commissioner of Customs (Appeal), Ahmedabad vide its Order No. No. MUN-CUSTOM-000-APP-573-16-17 dated 09.03.2017.

## **DEFENCE SUBMISSION**

**15.1** M/s. Colorobbia India Pvt. Ltd. vide their letter dated 21.02.2017 has submitted following submission regarding the appeal filed on 17.06.2016 against OIO No. MP & SEZ/ADC/RKC/182/ dated 31 march 2016 passed by Additional Commissioner of Customs, Custom House, MP & SEZ, Mundra:

- As submitted earlier, the First Schedule of Customs Tariff Act, 1975 specifies the nomenclature that is based on Harmonized System (HS) developed by World Customs Organization (WCO) which is applied uniformly by its members all over the world. This has been also stated in Para no. 1.2 of Chapter 4 of the Customs Manual, 2015, published on CBEC website. For ready reference, we have attached the screenshot of the relevant page from the website as Exhibit - I.
- In the context of the above, we have come across the classification decisions (rulings) taken by the Harmonized System Committee (HS Committee) of the WCO at the 58th Session held in the month of October 2016. We would like to draw your attention to decision number 8 of the said decisions (hereinafter referred to as 'decision'). The said decision states that following should be classified under CTH 3207.10:

*“Ceramic ink consisting of a suspension of inorganic pigments and particles, with a content of 25 to 50 % by weight in organic solvents, in proportions of between 40 to 70 % by weight. It is used by the ceramics industry in digital applications with inkjet devices, similar to printers but adapted for the industrial manufacture of ceramics”.*

The above mentioned decisions are attached as Exhibit - II

- We would like to mention that the above decision of HS Committee has come to our notice only in the month of January, 2017. Further, the said decision reaffirms our contention that the products under consideration are classifiable under CTH 3207 and not 3215.
- The above decision of the HS committee states that ceramic ink consisting of a suspension of inorganic pigments and particles in proportion of 25% to 50% & organic solvents in proportion of 40% to 70% are classifiable under CTH 3207.10. At the outset, we would like to emphasise on the word 'ceramic ink', mentioned in the decision. It has been argued time and again by the authorities that our product being an “ink” is akin to and used as “printing ink”, whereas ceramic ink similar to our product, inspite of being referred as ink, shall be classified under CTH 3207 and not under CTH 3215 (Printing Ink). Further, we wish to draw your attention to the test reports of Central Revenue Control Laboratory

(CRCL), Kandla. The report has opined as "The sample is in the form of pink colour thick liquid. It is a preparation containing inorganic oxide (Pigment) in solvent". Further, the report of CRCL, New Delhi opined as "The sample is in the form of pink coloured viscous liquid. It is a preparation based on inorganic colouring matter, glycolic bodies, phthalate, fatty matter & organic solvent. Nonvolatile residue = 45.20%, Ash content = 24.1%. Above analytical finding reveals that such compositions find mentioned to be used as Printing Ink. However, actual use of the product may be ascertained. Literal evidence reveals that such ink can be used in the Inkjet Printers on surface having clay coating".

➤ On the basis of the above, it can be inferred without any iota of doubt that the test report of CRCL, Kandla, CRCL, New Delhi and the decision of the HS Committee are referring to the same product. This is on account of following three points:

- a. The decision of HS Committee and the decision of test report of CRCL, Kandla & CRCL New Delhi refer to inks consisting of inorganic pigments in solvents.
- b. The HS Committee decision states that organic solvents are present in the ceramic inks in the proportions of 40% to 70%. The test report of CRCL, New Delhi states that the sample contains Non-volatile residue of 45.20% (which is organic solvents).
- c. The HS Committee decision states that ceramic inks are used in ceramic industry in digital applications with inkjet devices similar to printers but adapted to manufacture ceramics. The test report of CRCL, New Delhi states that "such ink can be used in inkjet printers on a surface having clay coating". We also refer to our submission dated 12 January, 2016 wherein we have submitted a list of our customers, evidencing that our products are only used in ceramic industry.

➤ It is also clear from the aforesaid decision that the technology used in our product is new and hence there are no advisory or judicial precedents analysing the classification of these goods. Thus, it is imperative to take cognizance of the actions being taken by other countries as well as the WCO.

➤ It is pertinent to note that the HSN which is adopted by India is developed by WCO. It is therefore, our humble submission that the products imported by us should be classified under CTH 32071040 considering that HS Committee of WCO has taken decision that the products in question would be classified under CTH 320710.



**15.2** M/s. Colorobbia India Pvt. Ltd. vide their letter dated 06.12.2017 has submitted another additional submission in relation to OIA No. MUN-CUSTOM-000-APP-573-16-17 dated 09.03.2017 passed by the Commissioner of Customs (Appeal), Ahmedabad which as under:

- The World Customs Organisation (WCO), at its 59th Session held in the month of March, 2017 amended the compendium of classification opinions. The said amendment is in line with the classification decisions (rulings) taken by the Harmonised System Committee (HS Committee) of the WCO at the 58th Session held in the month of October 2016. The same has been submitted to the good office of Commissioner of Customs (Appeals) on 27 February (annexed herewith as Exhibit - I), basis which the case has been remanded back to your good office.
- The said amendments inserts the following classification opinion for the Entry 320710:

*“3207.10 1. Ceramic inks for inkjet devices, consisting of a suspension of 25 to 50 % by weight of inorganic pigments (e.g., cobalt aluminate, zinc iron chromite, nickel-titanium antimony) in organic solvents (40 to 70 % by weight). The product is used by the ceramics industry in digital applications with inkjet devices to produce a coloured or opaque surface in the course of ceramic firing.  
Application of GIRs 1 and 6.”*

The extract of above mentioned amendment is attached as Exhibit - II

- The HSN which is adopted by India is developed by WCO. Further, we also like to reiterate the fact that the product under consideration is ceramic ink for inkjet device and not printing ink. It is therefore, our humble submission to take the cognizance of the actions being taken by other countries as well as the WCO which reaffirms our contention that the products under consideration are classifiable under CTH 3207 and not 3215.
- Since the said fact has come to our notice only after OIA was passed by the Commissioner of Customs (Appeals), on 9 March, 2017, we humbly request your good office to consider the above mentioned additional submissions.

**15.3** M/s. Colorobbia India Pvt. Ltd. vide their letter dated 31.01.2018 has submitted following additional submission in relation to OIA No. MUN-CUSTOM-000-APP-573-16-17 dated 09.03.2017 passed by the Commissioner of Customs (Appeal), Ahmedabad:

- The issue pending is of classification of Ceramic Printing Ink under CTH 3215 instead of CTH 3207.10.40. In similar dispute, the Principal Commissioner, Ahmedabad Customs has passed an order accepting the classification of Ceramic Printing Inks under CTH 3207.10.40 and not under CTH 3215. The copies of pronouncement made by the Principal Commissioner in the matter of M/s. Krishna Colours & Others and M/s. Synergy Fertichem Pvt. Ltd. & Others are attached as Exhibit-I for reference.
- While concluding the findings, the Principal Commissioner has relied on the internal communication made by the Joint Secretary (Customs), Central Board of Excise and Customs. In this communication, the Joint Secretary has accepted the decision taken by the Harmonized System Committee of World Customs Organization (WCO) in its 58<sup>th</sup> session on the classification of ceramic printing inks under CTH 3207.10.40.

**15.4** M/s. Colorobbia India Pvt. Ltd. vide their letter dated 06.11.2018 has submitted another additional submission in relation to OIA No. MUN-CUSTOM-000-APP-573-16-17 dated 09.03.2017 passed by the Commissioner of Customs (Appeal), Ahmedabad which as under:

- The company has received Investigation Report (IR) dated 26.10.2018 approved by the Commissioner of Customs (Imports-II), SVB, Mumbai. It has been informed vide the said IR that, the declared invoice value of the goods imported by M/s. Colorobbia India from their related suppliers have been accepted as transaction value for the purpose of assessment in terms of Section 14 of the Customs Act read with Rule 3(3)(b) of the Customs Valuation (Determination of Value of Imported Goods) Rules 2007. The copy of the said letter has been attached as Annexure-I for reference.

#### **16. Personal Hearing:**

Personal hearing was given to M/s. Colorobbia Chemical India (P) Ltd., on 03.02.2019 or 06/13.02.2019. Ms. Ashita Malhotra, Consultant M/s. Colorobbia Chemical India (P) Ltd., and Shri Manjit Modi, Director of M/s. Colorobbia Chemical India (P) Ltd., appeared for personal hearing on 06.02.2016 and explained that the issue has already been settled in their favour after the clarification of ceramic ink is decided by the department. The SCN is required to be vacated accordingly. They also reiterated the contents of their written submissions dated 27.02.2017, 11.12.2017, 06.02.2018 and 14.11.2018.

## **DISCUSSION AND FINDINGS:**

17. I have carefully gone through the case records pertaining to the issue. I find that earlier OIO No. MP & SEZ/ADC/RKS/182/2016-17 dated 31.03.2016 passed by my predecessor has been remand back by the Commissioner (Appeal), Customs, Ahmedabad vide OIA No. MUN-CUSTOM-000-APP-573-16-17 dated 09.03.2017. Firstly, I would like to discuss the details mentioned at para 10, 16 and para 18 of the above said OIA which as under:

**Para 10:** *"It is well settled law that Company, Firm etc. and its Director, Partner etc. are different entities. Also as per Section 129 of the said Act, Commissioner (Appeals) shall not entertain any appeal, unless the appellant has deposited seven and half per cent of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed....In this regard, at Sr. No. 6 of the said C.A.-1, it has been mentioned that "Alleged Customs duty differential duty deposited vide TR-6 challan No. MP&SEZ/1746/2013-14 dated 23.08.2013...". Thus, there is no mention of pre-deposit made with regard to the penalty imposed of Rs. 50,000/- on the Director of the said Appellants. Ideally, a separate Appeal should have been filed by the Director with to the imposition of personal penalty accompanied with proof of compliance of provisions of Section 129 of the said Act. In light of these facts, the instant appeal can only be considered as filed by M/s. Colorobbia Chemicals India Pvt. Ltd., against the decision pertaining to it and not one filed by Shri Rajshekhar Shettar, Director & Company head of the said appellants against the imposition of penalty of Rs. 50,000/- on him. Therefore, in the given facts, circumstance and legal position, I am not inclined to entertain the prayer/submission made to set aside the said personal penalty imposed of Rs. 50,000/- on the Director of the said Appellants".*

**Para 16:** *Before proceeding to deliberate the grounds of appeal, I find it pertinent to take up the submissions made vide letter dated 21.02.2017 as briefly discussed in para 11 supra and also that the same has not been put forth before the original authority. As the said aspect is not examined by the original authority and the same Appellants have raised the plea, I find remitting of the case with suitable directions for de novo decision become sine qua non to meet the ends of justice. Here it is clarified that instant appeal is considered to be files by M/s. Colorobbia Chemical India Pvt. Ltd. and therefore submissions with regard to order pertaining to them can only be considered and therefore de novo proceedings to be conducted would be restricted to the order portion pertaining to said Appellant.*

**Para 18:** *Accordingly, I remit the matter pertaining to the present appeal to the proper officer, who shall examine all facts, documents, provisions of law, submissions, rulings and case laws relied upon by the appellant M/s. Colorobbia Chemical India Pvt. Ltd. and then pass order in this case afresh after following principal of natural justice and adhering to the legal provisions. While passing this order, no opinion/views have been expressed on the merits of the dispute or on the submissions & the case laws cited by the appellant in this regard, which shall be independently considered by the adjudicating authority.*

17.1 In view of the above judicial pronouncements of the Commissioner (Appeal), Customs, Ahmedabad, I find that, the earlier Adjudication order pertaining to M/s. Colorobbia Chemicals India Pvt. Ltd. (Noticee No. 1) can only

be considered. I therefore proceed to implement the order of the Commissioner (Appeal), Customs, Ahmedabad.

**18.** The short issue to be decided is whether the product imported by the importer as 'Ceramic Colours/Pigments' would be classified under CTH 3207 or it would be classifiable as 'ceramic printing ink', falling under CTH 3215.

**19.** M/s. Colorobbia Chemical India Pvt. Ltd., have submitted copy of OIO No. AHM-CUSTOM-000-COM-003-17-18 and OIO No. AHM-CUSTOM-000-COM-004-17-18 both dated 28.09.2017 passed by the Principal Commissioner, Customs, Ahmedabad in the matter of M/s. Krishna Chem & Others and M/s. Synergy Fertichem Pvt. Ltd. & Others. Wherein the same issue has been adjudicated in favour of the noticees.

**20.** Before the decision with regards to classification of the products in question could be taken, the World Customs Organization (WCO) which was established in 1952 as the Customs Co-operation Council (CCC) came up with clarification on the classification of ceramic printing ink. WCO is an independent intergovernmental body having 182 member nations. India is one of the member nations, since 1971. In the instant case before me, the classification of Ceramic Printing Ink are used in inkjet technology, hence it is incumbent upon me to take cognizance of the same.

**21.** I do not hold back to record it here that after all travails and tribulation in coming to the conclusion that the products are classifiable under CTH 3215 which culminated in the present show cause notice, the matter at last got clarified during the 58th session of Harmonized System Committee of World Customs Organization. Before I record my finding any further I would like to mention that the issue of classification was indeed in dispute which made the Harmonized System of Committee of the World Customs Organization to take up in its 58th session.

**22.** The deliberations before the decision of the World Customs Organization in this regard is reproduced verbatim herein under;

*ANNEX H/15 TO Doc.NC2304E1 b  
(HSC/58/Oct, 2016)*

1	2
NC2288E1a	Classification of ceramic inks for inkjet technology (request by EU)

*DECISIONS OF THE HARMONIZED SYSTEM COMMITTEE (O.Eng.)*

1. After the introduction of the working document by the Chairperson, the EU Delegate informed the Committee about the reason behind request concerning

the classification of ceramic inks for inkjet technology. He pointed out that, although, there was no dispute on this issue with another administration the EU was aware that the classification of these ceramic inks was not uniform among members,

2. The EU Delegate was of the view that headings 32.07 and 32.15 would merit consideration for the classification of the product in question. However, heading 32.15 should be ruled out because the ceramic inks differed significantly from classic or conventional inks (i.e. printing ink, writing or drawing ink and other inks) of heading 32.15. Ceramic inks for inkjet technology were used for colouring or opacifying by firing the surface of ceramic at very high temperature, whereas classic or conventional inks of heading 32.15 were used at low temperatures to graphically decorate other materials, such as paper, plastics and textiles. He continued noting that the wording of heading 32.07 referred to liquid lustres and similar preparations and according to item (4) of the Explanatory Note to heading 32.07 liquid lustres "were solutions or suspensions of metal compounds in spirits of turpentine or other organic solvents, used for decorating ceramics or glassware. Since the product in question was a suspension of inorganic pigments in organic solvents, it could be considered as fitting well with the description of the similar preparations covered by heading 32.07. Therefore, he concluded that the product in question should be classified in heading 32.07 (subheading 3207.30) by GIR 1 and 6 as a liquid lustre and similar.
3. After a short discussion, the Committee unanimously agreed to classify the ceramic inks in heading 32.07 by GIR 1.
4. However, opinions were divided among delegates as to whether the inks should be classified in subheading 3207.10 (pigments) of 3207.30 (liquid lustres). The views expressed by delegates are summarized below.

#### Subheading 3207.10

5. Although Item (1) of the Explanatory Note to heading 32.07 stipulated that pigments of this heading were dry mixtures, neither the texts of heading 32.07 nor sub-heading 3207.10 required that pigments must be dry. Therefore, since the inks in question could be regarded as very similar to the preparations mentioned in item (1) of the Explanatory Note to heading 32.07 (i.e. prepared pigments, prepared opacifiers and prepared colours) as described in Paragraph 32 of the working document, this type of inks should be classified in subheading 3207.10 as prepared pigments, prepared opacifiers, prepared colours and similar preparations.

#### Subheading 3207.30

6. Accordingly to item (4) of the Explanatory Note to heading 32.07, liquid lustres of subheading 3207.30 are solutions or suspensions of metal compounds in spirits of turpentine or other organic solvents. Since the inks in question were in the form of suspension of inorganic pigment, which was generally made of a metal, they should be classified in subheading 3207.30 as liquid lustres and similar preparations. Moreover, the word "lustre" meant "shine" in French and the product in question would provide both shine and colour to ceramics.
7. After further exchange of view, the question was put to vote and the Committee classified the ceramic ink in subheading 3207.10 rather than subheading 3207.30 by 20 votes to 19. More specifically, the Committee classified the ceramic inks for inkjet technology in heading 32.07, sub-heading 3207.10 by

application of GIRs 1 to 6.

8. In order to give effect to this decision, the Committee instructed the Secretariat to prepare draft classification Opinion for examination, in the first instance, by the next professional Working Party.

23. After the deliberations, the classification decision was given as under by the WCO:

*"The following list contains the classification decisions (other than those subject to a reservation taken by the Harmonized System Committee (58th session–October 2016) on specific products, together with their related Harmonized System code numbers and, in certain cases, the classification rationale".*

No	Product description	Classification	HS codes considered	Classification rationale
8	<i>Ceramic Ink consisting of a suspension of inorganic pigments and particles, with a content of 25 to 50% by weight in organic solvents, in proportions of between 40 to 70% by weight. It is used by the ceramics industry in digital applications with inkjet devices, similar to printers but adapted for the industrial manufacture of ceramics"</i>	3207.10	3207.10 and 3207.30	GIRs 1 and 6

24. In the instant case before me, the product in question is Ceramic Printing Ink and it gets very well clarified by the Apex body for deciding classification of any product, that the Ceramic Printing ink is classifiable under 3207 and not 3215. It more precisely classifies it under 3207.10.

25. The Joint Secretary, Customs, CBEC, New Delhi under their communication No 528/14/2017-STO (TU) dated 10.4.2017 has enclosed the decision taken by the Harmonized System Committee in their 58th session. The decision made under communication No. Annex H/15 to Doc. NC 2304 E1b (HSC/58/Oct. 2016) is reproduced below:

*"6 According to item (4) of the Explanatory Note to heading 32.07, liquid lustres of sub-heading 3207.30 are solutions or suspensions of metal compounds in spirits of turpentine or other organic solvents. Since the inks in question were in the form of a suspension of inorganic pigments, which was generally made of a metal, they should be classified in sub-heading 3207.30 as liquid lustres and similar preparations. Moreover, the word 'lustre' meant 'shine' in French and the product in question would provide both shine and colour to ceramics.*

*7 After a further exchange of views, the question was put to vote and the Committee classified the ceramic inks in sub heading 3207.10 rather than subheading 3207.30 by 20 votes to 19. More specifically, the Committee*

classified the ceramic inks for inkjet technology in heading 32.07, sub heading 3207.10, by application of GIRs 1 and 6".

26. It has been mentioned in the above letter dated 10.4.2017 of the Joint Secretary (Customs) that it has examined the decision of the Harmonized System Committee and informed that ceramic inks are appropriately classifiable under CTH 3207.10.

27. It is clear that the disputed goods were ceramic inks and used in digital inkjet printing machines for printing on ceramic tiles. Accordingly, the decision of the Harmonized System Committee taken in its 58th session on the classification of such printing inks under CTH 3207.10, as accepted by the Board is binding on me. I, therefore, hold that the goods imported by the importer fall under CTH 3207.10, as claimed by the importer. Subsequently, the entire set of allegations made in the SCN dated 19.05.2014 against M/s. Colorobbia Chemicals India Pvt. Ltd., (Noticee No. 1) cannot sustain and the SCNs need to be dropped.

28. Having considered my above findings, I pass the following Order:

**ORDER**

I vacate the entire proceedings initiated against M/s. Colorobbia Chemicals India Pvt. Ltd., Ahmedabad (Noticee No. 1) vide show cause notice no. VIII/48-295/MISC/IMP SCN/MP & SEZ/2013-14 dated 19.05.2014.

  
(Amarjeet Singh)

Additional Commissioner  
Customs House, Mundra

F. No. VIII/48-45/Adj/ADC/MCH/17-18

Date: 19.02.2019

**By R.P.A.D.**

To,

(a) M/s. Colorobbia Chemical India Pvt. Ltd., Plot No. SM 21, Sanand Engineering Estate, GIDC, Sanand-II (BOL), Sanand, Ahmedabad-382110

**Copy To:**

1. Additional Director, Directorate of Revenue Intelligence, Ahmedabad Zonal Unit, Unit No. 15, Magnet Corporate Park, S.G. Highway, Thaltej, Ahmedabad-380059
2. The Deputy Director, DRI, Regional Unit, Plot No. 193, Sector-IV, OSLO, Gandhidham, Kutch-370201

3. Deputy Commissioner, Import Assessment, Group-III, Customs House, Mundra.
4. The Deputy Commissioner (RRA), Customs House Mundra.
5. The Deputy/Assistant Commissioner (Recovery), Customs House Mundra.
6. The Deputy/Assistant Commissioner (EDI), Customs House Mundra.
7. Guard File