



**CUSTOMS AUTHORITY FOR ADVANCE RULINGS
(CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS)
5TH FLOOR, NDMC BUILDING, YASHWANT PLACE, SATYA MARG,
CHANAKYAPURI, NEW DELHI-110021
[Email: cus-advrulings.del@gov.in]**

Present

Vijay Singh Chauhan (Customs Authority for Advance Rulings, New Delhi)

**The day of 2nd May, 2022
Ruling No.- CAAR/Del/Nuttish/06/2022
In Application No. VIII/CAAR/Delhi/Nuttish/28/2021**

Name and address of the applicant: M/s. Nuttish Exim India Private Limited,
Shop No. 11 (B.G.F.S), Block C-17,
Sanjay Place, Agra, U.P.- 282002

Commissioner concerned: Principal Commissioner of Customs,
Air Cargo Import, New Custom House,
Near IGI Airport,
New Delhi-110037

Present for the Applicant: Shri Satish Reddy, Authorized Representative

Present for the Department: None



Ruling

M/s. Nuttish Exim India Private Limited., Shop No. 11 (B.G.F.S.), Block-C-17, Sanjay Place, Agra, U.P.-282002, a company having PAN AAGCN7578M (applicant, in short), has filed an application dated 03.08.2021 seeking advance ruling under section 28-H of the Customs Act, 1962 before the Customs Authority for Advance Rulings, New Delhi (CAAR, New Delhi in short). The application was received in the Secretariat of CAAR, New Delhi on 30.09.2021. The application was accordingly registered under serial No. 16/2021-Delhi dated 30.09.2021.

2.1 Secretariat of CAAR, New Delhi sought comments of the concerned Principal Commissioner of Customs, on the application for advance ruling, vide letter dated 05.10.2021. In this regard, office of the Principal Commissioner of Customs, ACC Import, New Delhi vide letter dated 17.11.2021 has forwarded comments on the application for advance ruling. The applicant while proposing import of scrap of precious metals (HSN Code 7112), which are remnants after manufacturing of precious metal products under India-Malaysia Comprehensive Economic Cooperation Agreement (CECA, in short) has sought advance ruling on the following questions:

- (i) Whether the waste and scrap of precious metal generated (as described in the application) in Malaysia and collected from there would qualify as goods originating in Malaysia, in terms of the Customs Tariff (Determination of Origin of Goods under the Preferential Trade Agreement between the Government of the Republic of India and Malaysia) Rules, 2011 (Rules, 2011, in short)? and
- (ii) Whether the benefit of tariff exemption under serial number 1007 of Notification No. 65/2016-Customs dated 31.12.2016 would be available to such waste and scrap of precious metal collected in Malaysia and imported into India under a certificate of origin?

2.2 The applicant, on account of business confidentiality and supply chain secrecy reasons, has also requested to keep the order of the Advance Ruling Authority confidential and not to place it in public domain at least for a period of six months from the date of passing the order.

3. While applying for ruling on the said questions, the applicant has stated that as per rule 3 of the Customs Tariff (Determination of Origin of Goods under the Preferential Trade Agreement between the Government of the Republic of India and Malaysia) Rules, 2011, for the purposes of these rules, goods imported by a party which has consigned directly as referred to in rule 9 shall be deemed to be originating and eligible for preferential tariff treatment if-



(a) The goods are wholly obtained or produced in the territory of the exporting party as referred to in rule 4; or

(b) The goods are not wholly obtained or produced in the territory of the exporting party but the said goods are eligible for preferential treatment under rule 5 or rule 6.

3.1 In light of the above, the applicant has stated that goods falling under rule 4 (wholly obtained or produced) are eligible for preferential tariff rates under the Notification No. 53/2011-Customs dated 01.07.2011; rule 4 states that for the purposes of clause (a) of rule 3, the goods which shall be deemed to be wholly obtained or produced in the territory of a party and the entry from the list of goods given under rule 4 which is relevant in this matter is clause (i) referring to, 'the articles collected there which cannot perform their original purpose and are not capable of being restored or repaired and are fit only for disposal or recovery of parts of raw material or for recycling purposes'.

3.2 The applicant further states that, sub-rule(2) of rule 4 states that for the purposes of.- clause (i), goods shall include all scrap and waste including scrap and waste resulting from manufacturing or processing operations or consumption in the same country, scrap machinery, discarded packaging and all products that can no longer perform the purpose for which they were produced and are fit only for disposal for the recovery of raw materials and such manufacturing or processing operations shall include all types of processing which shall include industrial, chemical, mining, agriculture, construction, refining, incineration and sewage treatment operations; the company intends to import scrap of precious metal products (HSN 7112) from Malaysia, the precious metal products are made from strips of precious metals by the process of manufacturing, alloying, melting, refining, polishing, designing, designing, malleability striping and others, on completion of these processes, the precious metal products are sold, the remnant material is not usable as it cannot be restored to its original form and is disposed as waste and scrap; they will use the waste and scrap for melting and manufacturing jewelry; they are of the view that goods classified under CTH 7112 are eligible for preferential rate of duty (Notification No. 53/2011-Customs), if they meet the origin criteria in accordance with the Rules of Origin provided under the Notification No. 43/2011-Customs (N.T.); in their case, the waste and scrap of precious metals is a remnant during the process of manufacture of precious metal products and the same cannot perform the original purpose of the precious metal strip i.e. no articles of precious metal can be made from them by cutting, slicing, melting, refining, polishing, designing, malleability, striping and others, cannot be restored or repaired and is fit only for disposal or for recycling purposes; the waste and scrap cannot be right away used for manufacture of precious metal products or any other articles of precious metals in the manner that articles can be made from the strips of precious metal; the waste and scrap is usable only for recycling



purpose. The applicant also states that as per Cambridge Dictionary, 'restore' means to return something or someone to an earlier good condition or good position; restoring can be used in the case of machine which on account of prolonged use, has suffered wear and tear and which can be restored in a good working condition; similarly 'repair' would mean to put something old or damaged back into good condition; in this case, the scrap is not in the nature of goods that can be restored or repaired; while it can be melted and made into a precious metal bar or ingot etc., such activity would not fall under the scope of restoring or repairing; the operations of restoring or repairing are done on the goods to bring it back to usable and working/useable condition but not by completely changing its name, character and use; a worn out machine can be restored, a damaged machine can be repaired but waste and scrap can only be disposed or recycled; melting the scrap and retrieving the raw material or making into bars, ingots, billets etc. does not qualify as restore/repair; it is rather a manufacturing operation performed on the waste and scrap to change their name, character and use; it is undoubtedly for this reason that the sub-rule 4 (i) also mentions, "---fit only for disposal or recovery of parts of raw materials or for recycling purposes"; the waste and scrap of precious metals collected from Malaysia and proposed to be imported by their company would fall under this category; it is further explained under rule 4 (2) (iv) that under clause (i), goods shall include all scrap and waste including scrap and waste resulting from manufacturing or processing operations or consumption in the same country, scrap machinery, discarded packaging and all products that can no longer perform the purpose for which they were produced and are fit only for disposal for the recovery of raw materials and such manufacturing or processing operations shall include all types of processing which shall include industrial, chemical, mining, refining and sewage treatment operations. The applicant has also stated that the material proposed to be imported is squarely covered and the material, is scrap and waste resulting from manufacturing or processing operations, is goods that no longer perform the original purpose, is fit only for disposal for the recovery of raw materials; the sum and substance of the above legal provisions is that the waste and scrap obtained during the manufacture of precious metal products in Malaysia and collected from there and exported to India would fall under rule 4 of the Customs Tariff (Determination of Origin of Goods under the Preferential Trade Agreement between the Government of the Republic of India and Malaysia) Rules, 2011; consequently, they would be considered as 'wholly produced or obtained' in Malaysia; in view thereof, the said goods would be eligible for tariff preference under Notification 53/2011-Customs; there are other conditions governing the grant of tariff preferences under the notification no. 53/2011-Customs dated 01.07.2011 read with Customs Tariff (Determination of Origin of Goods under the Preferential Trade Agreement between the Government of the Republic of India and Malaysia) Rules, 2011; the other conditions include following the direct consignment rule, producing a certificate of origin as per CECA, compliance to the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (CAROTAR) etc.



4.1 In accordance with the procedure prescribed under the regulations, personal hearing in the matter took place on 18.11.2021 and the same was attended by Shri Satish Reddy, Authorized Representative (AR). During the personal hearing, the Authority informed AR that comments of the Principal Commissioner of Customs, ACC (Import), New Delhi dated 17.11.2021 have been received and a copy of the same was handed over to the AR. The AR was also requested to clarify the name of the precious metal which was purposed to be obtained from the scrap, which the applicant intended to import. The learned AR informed that the precious metal will essentially be gold, which remain after coins/circular shapes are extracted from a sheet. Further discussions in the personal hearing revolved around the scope of term 'scrap' and restrictions, if any in the specific case of precious metal etc. The Authority requested the applicant to provide ratio of the scrap to virgin sheet in terms of weight, volume and value. The learned AR assured to provide requisite information.

4.2 Thereafter, additional submissions have been received vide email dated 30.11.2021, wherein the applicant has stated that the concerned Principal Commissioner has stated that description of the tariff heading under CTH 7112 correlates with goods mentioned in the application and that as the goods come under the purview of CTH 7112, they are eligible for duty exemption under serial number 1007 of Notification No. 65/2016 dated 31.12.2016 (original notification 53/2011 dated 01.07.2011). It is further stated that the origin of the goods can be ascertained as per the rules of origin under the India-Malaysia CECA and that the origin criteria needs to be correlated with CAROTAR, 2020; the point made by the Commissionerate that the origin benefits are subject to the various provisions of the Rules of Origin and CAROTAR is well noted; they also note that the Commissionerate has not countered any of the submissions made by them in the CAAR application, clearly establishing their accord with claim in the application; as regards, non-fiscal compliance applicable to import of goods in question, it is stated that at present, ITC (HS) does not lay down conditions for import of goods falling under heading 7112. Having submitted the legal position, they made further submissions on what would be the implication of the position on the outcome of the application. The applicant has stated inter-alia that the ruling on the questions raised should be uninfluenced by other import compliance under the law; their company, as a prospective importer would be bound by such compliance and non-fiscal measures; advance rulings are not envisaged on such measures and the nature of a measure or the existence or otherwise, would not influence the rulings on the issues covered under section 28H of the Customs Act, 1962; at the time of import they will conduct due diligence and comply with ITC (HS) and other conditions applicable to import; as regards proportion of material left after extraction of coins, they have calculated the proportion of the material left after extraction of coins, the proportion would vary based on the size of the coins and dimensions of the strip; however, the percentage of remnant material would be in the range of 35% to 40%.



5. Thereafter, vide letter dated 17.02.2022, the applicant was also asked to furnish following further details in order to take a final view as to whether the goods proposed to be imported answer to description of 'waste and scrap of precious metal':

What is the decline in value of the goods in question (remnants of the precious metal sheet) after obtaining the precious metal coins?, What are the processes involved in conversion of the said remnants of the precious metal sheet in to fresh metal sheet capable of being subjected to similar cutting of coins? In this regard, the details may include difficulty, time, cost and loss of precious metal, if any.

5.1 In reply, the applicant submitted that decline in value of the subject goods, after obtaining the precious metal coins is on account of: (i) loss of weight attributable to the coins extracted, (ii) loss of premium on account of removal of the (coin) material and (iii) loss in refining. The loss, on account of (i) is proportionate to the coins and the related calculations have already been given in their response dated 30.11.2021, on account of (ii) loss is estimated at 2 to 2.5 % and on account of (iii) loss is estimated at 0.5 – 1%. The processes involved in conversion of the said remnants of the precious metal sheet into fresh metal sheet capable of being subjected to similar cutting of coins are as below –

Step No.	Description of processes
1	Washing of remnant material
2	Melting of washed remnant material
3	Refining of melted metal
4	Making of gold
5	Mixing of alloy as per customer order (required purity)
6	Strip making

5.2 The applicant further states that to conduct the above processes, time required is 8 to 10 hours, approximate cost is 0.50% and approximate loss is 0.50% to 1.00%; for the conversion of the said remnant material into metal sheet, it would require setting up a separate refining division with a plant to run the division; the approximate cost to set up the division will be around USD 100,000 to USD 200,000; it is further stated that as per the HS explanatory Notes, heading 7112 covers 'waste and scrap in metallic form, fit only for the recovery of the precious metal or for use as a basis for the manufacture of chemicals'; this explanation fits the subject goods, as well as the wording of rule 4 of the Rules of Origin cited in the application; the subject goods are fit only for recovery of raw material and are not conducive for restoring or repairing; to reiterate an apparent point, the law makers who formulated the tariff entry would be aware of the nature of gold (or any other metals); yet, the tariff entry under 7112 covers 'waste and scrap of precious metal or of metal clad with precious metal; other waste and scrap containing



precious metal or precious metal compounds, of a kind used principally for the recovery of precious metal other than goods of heading 8549' (2022 tariff). (as per pre-2022 tariff, the entry was "Waste and scrap of precious metal or of metal clad with precious metal; other waste and scrap containing precious metal or precious metal compounds, of a kind used principally for the recovery of precious metal"); the explanatory notes to heading 7112 spell out that *"This heading covers waste and scrap in metallic form fit only for the recovery of precious metal, or for use as a basis for the manufacture of chemicals. The heading also covers waste and scrap of any material containing precious metal or precious metal compounds, of a kind used principally for the recovery of precious metal"*; it is widely known that how gold could be melted or recycled, which the tariff entry and the HS explanatory notes acknowledge and still make clear that the if the material is fit for recovery of precious metal, it is classifiable under heading 7112; the factors viz. difficulty in recycling or the cost involved are extraneous to the principles that guide the classification under customs tariff; irrespective of the percentage of the remnant material or the degree of difficulty or the loss or the costs involved, the classification of the subject goods would be under CTH 7112, as long as they answer to the HS explanation that the scrap should be fit only for the recovery of the precious metal; the terms of subheading 7112, the HS explanatory notes for the subheading, the wording of rule 4 of the Rules of Origin cited in the application, all fit the subject goods; the percentage of the remnant material should not influence the classification of the goods under CTH 7112, in view of the terms of the tariff headings and HSN notes; further, Rule 1 of the General Rules for Interpretation of the Import Tariff states that *"...for legal purposes, 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..."*; rule 3 of the General Rules states that *"the heading which provides the most specific description shall be preferred to headings providing a more general description"*; the classification of the subject goods under heading 7112 answers both the above General Rules for Interpretation of the Import Tariff, since the terms of this heading covers the subject goods specifically and precisely; importantly, there is no other suitable alternative heading under the Customs tariff for the goods proposed to be imported; the goods are not unwrought or monetary forms of gold, or an article of gold jewelry or any other form of gold precisely covered in the tariff; hence, any other heading would be less specific and less apt for the subject goods; thus, in light of the details given in the application and further submissions, the character of the goods, the commercial understanding of the goods, as well as the wording of the heading 7112 and the relevant HSN explanatory notes, the goods covered in the application are classifiable under customs tariff heading 7112; Customs Commissionerate, New Delhi has also not raised any objection on their application.

6. Finding that the application is valid in terms of the provisions of the Customs Act and the CAAR Regulations, 2021, I admit the application. Thereafter, having heard the applicant, having gone through the details of the goods as described in the application, comments of the designated Principal Commissioner and after hearing



the applicant at length during the personal hearing and having gone through further submissions of the applicant, I proceed to examine the questions on merit and give ruling on the questions raised in the application.

7. The applicant has sought ruling on two questions, viz. as to whether precious metal scrap generated and collected in Malaysia would qualify as originating in Malaysia in terms of Customs Tariff (Determination of Origin of Goods Under the Preferential Trade Agreement between the Governments of the Republic of India and Malaysia) Rules, 2011 and applicability of concessional rate of duty vide serial No. 1007 of Notification No. 53/2011-Customs dated 01.07.2011. Since applicability of rate of duty under the notification is based on classification of the goods under a heading of the Customs Tariff, it becomes imperative to decide the classification of goods which the applicant intends to import.

7.1 In the original application for advance ruling, the applicant has stated that they intend to import from Malaysia, scrap of precious metal (subsequently specified to be gold) which is remaining after manufacture of precious metal products from strips of precious metal. It was also stated that waste and scrap of precious metal is a remnant during the process of manufacture of precious metal production and scrap is not in the nature of goods that can be restored or repaired. The applicant is of the view that the goods which they intend to import are covered under category of goods mentioned in clause (i) of rule 4(1) of Rules, 2011 which shall be deemed to be wholly obtained or produced in the territory of a party and the category of goods covered under clause (i) of rule 4(1) of Rules, 2011 are the articles collected there which cannot perform their original purpose and are not capable of being restored or repaired and are fit only for disposal or recovery of parts of raw material or for recycling. Rule 4 (2) of Rules, 2011 provides that for the purpose of clause (i), goods shall include all scrap and waste including scrap and waste resulting from manufacturing or processing operations or consumption in the same country, scrap machinery, discarded packaging and all products that can no longer perform the purpose for which they were produced and are fit only for disposal for the recovery of raw materials and such manufacturing or processing operations shall include all types of processing, which shall include industrial, chemical, mining, agriculture, construction, refining, incineration and sewage treatment operations.

7.2 As regards the goods which the applicant intend to import, the applicant has termed the goods interchangeably as waste, scrap or remnant. Before moving to discuss the legal meaning or explanations relevant to classification under the Customs Tariff Act, I take up the dictionary meaning of the said three words. Merriam Webster dictionary defines waste as a noun, inter alia, as: "*damaged, defective, or superfluous material produced by a manufacturing process: such as: material rejected during a textile manufacturing process and used usually for wiping away dirt and oil: cotton waste*"; and "*an unwanted by-product of a manufacturing process, chemical laboratory, or nuclear reactor.*" It considers scrap to be a category of waste,



describing it as: “*manufactured articles or parts rejected or discarded and useful only as material for reprocessing especially : waste and discarded metal.*” The same dictionary defines remnant as: (1)(a) *a usually small part, member, or trace remaining, (b): a small surviving group —often used in plural; and (2) an unsold or unused end of piece goods.*”

7.3 I now look at the plausible entries for gold waste/scrap/remnant and the related guidance in respect of the same. Heading 7112 covers *waste and scrap of precious metal or of metal clad with precious metal; other waste and scrap containing precious metal or precious metal compounds, of a kind used principally for the metal*, whereas gold (including gold plated with platinum) unwrought or in semi-manufactured forms, or in powder form is covered by heading 7108. Chapter Note 4A provides that the expression “*precious metal*” means silver, gold and platinum; and Chapter Note 8 provides that *subject to Note 1(a) to Section VI, goods answering to a description in heading 7112 are to be classified in that heading and in no other heading of this Schedule.*

7.4 In this regard, reference to Harmonized Commodity Description and Coding System of the World Customs Organization, to which India is a signatory, would also be useful. It is seen that with respect to heading 7112, the HSN prescribes the following: This heading covers *waste and scrap in metallic form fit only (emphasis in original) for the recovery of the precious metal compounds or for use as a basis for the manufacture of chemicals. This heading also covers waste and scrap of any material containing precious metal or precious metal compounds, of a kind used principally for the recovery of precious metal.* HSN goes on to provide an instructive inclusion list:

- (A) *Ash containing precious metal or precious metal compounds, arising from the incineration of photographic films, printed circuit boards, etc.*
- (B) *Waste and residues derived from the mechanical working of the precious metal or of metal clad with precious metal, in mints, goldsmiths', silversmiths', jewellers' workshop, etc. for example, sweepings, dust, lemls, shavings, etc. resulting from shaping, drilling, working etc.*
- (C) *Scrap of worn-out or broken articles (tableware, goldsmiths' or silversmiths' wares, catalysts in the form of woven gauze, etc.) no longer fit for their original use. It does not extend to those which, with or without repair or renovation, can be reused for their former purposes, or which can be converted for other uses without being subjected to processes for the recovery of precious metals.*
- (D) *Waste and scrap of photographic plates, film, paper, paperboard or textiles, containing precious metal in metallic form or in the form of compounds (e.g. silver halides).*
- (E) *Waste and scrap of electronic circuit boards and similar carriers containing precious metal (e.g. gold or silver).*



(F) *Residues of metallurgical, electrolytic or chemical processes, containing precious metal (e.g. slags, sludges from electrolytic refining and plating, silver residues from photographic fixing baths.*

8. Therefore, the question essentially boils down to whether the process to which gold strips, which are prima facie classifiable under heading 7108, are subjected to obtain gold coins of different size, also prima facie classifiable under heading 7108, are such that the remaining gold material described by the applicant as remnant/scrap/waste change their essential character to the extent that they are no longer classifiable under heading 7108 but merit classification under heading 7112 as waste or scrap of gold.

8.1 The applicant has explained that different size of coins would be cut from the precious metal strips and they intend to import remaining strip as waste and scrap under Rules, 2011. While, not mentioned explicitly in the application, it is the contention of the applicant that goods proposed to be imported as waste or scrap of gold would fulfil the rules relating to country of origin even when the precious gold strip would not be of Malaysian origin. The applicant has opined that the goods which they intend to import are covered under clause (i) of rule 4(1) of Rules, 2011 as articles which cannot perform their original purpose and are not capable of being restored or repaired and are fit only for disposal or recovery of parts of raw material or for recycling.

8.2 I find that the gold strips, remaining after cutting out of gold coins of varying size, do not meet the dictionary meaning of either waste or scrap or remnant. While they may not be of the desirable shape, the remaining strip do not seem to lose their essential character of gold, they do not become useless or worthy of being discarded. The per unit value of gold contained in the coins and remaining strip would be almost the same. Therefore, as per the dictionary meaning both the gold coins and the remaining gold strip would answer to the description of gold.

8.3 I now consider the HSN guidance and note that for the remaining strip of gold to be considered as waste or scrap, it would need to be established that it is *fit only* (emphasis in original) for the recovery of the precious metal. Further, I find that it is S. No. B of the inclusive definition that best approximates the goods under consideration, arising from *the mechanical working of the precious metal either at a goldsmiths', silversmiths', jewellers' workshop*. However, for remaining gold strip to be considered as waste or scrap, it should have acquired the nature of *sweepings, dust, lemel, shavings, etc.* during the process of *shaping or working*. In view of the above, it is evident to me that the remaining strip of gold continues to be gold, and there is indeed no need for gold to be recovered from this strip. It has not changed its nature to *sweepings, dust, lemel, shavings, etc.* for gold strips, albeit with coins extracted, to qualify as waste or scrap of gold.

9. In view of the above, I rule as following:



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9.1 The goods, as described, are held to be gold and not waste or scrap of gold; therefore, the same are not classifiable under heading 7112 of the Customs Tariff Act, 1975;

9.2 The country of origin of the said goods would be the same as the country of origin of the gold strip used for extraction of coins of varying size.

9.3 The ruling may be kept confidential and not be placed in public domain for a period of 6 months, i.e. till 31st October, 2022.

Date: 02.05.2022

(Vijay Singh Chauhan)
Customs Authority for Advance Rulings, New Delhi



C. No. VIII/CAAR/Delhi/Nuttish/28/2021

2725

Dated: 02.05.2022

This copy is certified to be a true copy of the ruling and is sent to: -

1. M/s. Nuttish Exim India Pvt. Ltd., Shop No.-11 (B.G.F.S.) Block-C-17, Sanjay Place Agra, U.P.- 282002
2. Principal Commissioner of Customs, Air Cargo Import, New Customs House, IGI Airport Complex, New Delhi-110037
3. The Customs Authority for Advance Rulings, Mumbai, New Custom House, Ballard Estate, Mumbai-400001
4. The Chief Commissioner (AR), Customs Excise & Service Tax Appellate Tribunal (CESTAT), West Block-2, Wing-2, R.K. Puram, New Delhi-110066
5. The Chief Commissioner of Customs, Delhi Customs Zone, New Custom House, IGI Airport Complex, New Delhi-110037
6. The Member (Customs), CBIC, North Block, New Delhi
7. Guard file

LM
02.05.2022

(Anamika Singh)

Secretary,

Customs Authority for Advance Rulings, New Delhi

