CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
New Delhi

PRINCIPAL BENCH – COURT NO. 4

Customs Appeal No. 50006 of 2023

[Arising out of Order-in-Appeal No. CCA/CUS/D-II/ICD/PPG/866-867/2022-23 dated 25.07.2022 passed by the Commissioner (Appeals) of Customs, New Delhi]

Commissioner, Customs-Patparganj : Appellant
ICD Patparganj & Other ICDs, East Delhi
New Delhi-110096

Vs

Siria Impex Private Limited : Respondent
D-43, Sector-11, Noida
U.P.-201301

WITH

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U.P.-201301

APPEARANCE:
Shri Girijesh Kumar, Authorized Representative for the Appellant
Shri B. L. Garg, Advocate for the Respondent

CORAM :
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER No. 50819-50820/2026

Date of Hearing:07.04.2026

Date of Decision: 29.04.2026

DR. RACHNA GUPTA

The present order disposes of two appeals filed by the department assailing the Order-in-Appeal (O-I-A) No. 866-867 of 2022-23 dated 25.07.2022.

2. Vide the said order (O-I-A), Commissioner (Appeals) of Customs has allowed both the appeals filed by M/s Siria Impex Private Limited[1] setting aside the respective orders-in-original i.e. Order-in-Original No. 27/2022 dated 14.01.2022 in Appeal No. 50006 of 2023 and Order-in-Original No. 28/2022 dated 18.01.2022 in Appeal No. 50007 of 2023. Details of both the appeals are:-

Appeal No.	SCN No.	O-I-O	Demand & Penalty	O-I-A
C/50006/2023	C.No. VIII/6/ICD/PPG/Gr-5/TAM-21/20-21/117/2020 DATED 28.07.2021	28/JS/ADC/SIRIA/ICD-PPG/2022 dated 18.01.2022	Differential Duty of Rs. 5,74,280/- and Penalty of Rs. 50,000/-	CC(A)CUS/D-II/ICD/PPG/866-867/2022-23 dated 25.07.2022
C/50007/2023	C.No. VIII/6/ICD/PPG/Gr-5/TAM-21/20-21/117/2020 DATED 28.07.2021	28/JS/ADC/SIRIA impex/ICD-PPG/2022 dated 18.01.2022	-do -	-do-

3. The facts, in brief, for the present adjudication are as follows:-

That the appellant had filed several Bills of Entry for import of "Molybdenum Mirror and Shields" declaring the classification under CTH 81029590 attracting Basic Customs Duty[2] @ 5%. However, during the course of the audit of those Bills of Entry got classified under CTH 81029900 attracting BCD @ 10%. Vide the audit report dated 22.02.2021, the Audit team observed the mis-declaration of imported goods has resulted into short levy of duty amounting to Rs. 16,78,288/-. The appellant was called upon to explain the same vide letter dated 14.08.2020 and 13.11.2020. The appellant disagreed with those objections vide their letter dated 23.08.2020 on the various grounds mentioned in the said letter. Being un-satisfied of that reply,

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1 the Respondent
2 BCD

the department served the show cause notice[3] upon the appellant as tabulated above proposing the recovery of the short paid as customs duty of such amount as mentioned in the table above in terms of Section 28 (1) of Customs Act, 1962[4] along with interest at the appropriate rate and the proportionate penalties under Section 112(a) of the Customs Act. The goods in question were proposed to be confiscated in terms of provisions of Section 111 (m) of Customs Act, 1962. The said proposal was confirmed by the original adjudicating authority vide the afore tabulated two order-in-originals. The appeals of the importer against both the said OIOs have been as filed in pursuant to the Review Order No. 17/2022 dated 02.11.2022 in terms of sub-section 1 of Section 129A/Sub-section 4 of Section 129 D of the Customs Act praying for setting aside the said order-in-appeal dated 25.08.2022. Commissioner (Appeals) has allowed the appeals. Being aggrieved the department is before this Tribunal.

3. We have heard Shri Girijesh Kumar, learned Authorized Representative appearing for the Department and Shri B. L. Garg, learned Counsel for the Department and also perused the entire records of the appeals.

4. Learned Authorized Representative for the Department-appellant has submitted that the original adjudicating authorities had rightly held that the impugned goods i.e. Molybdenum Mirrors/Shields are classifiable under CTH 81029900 for the reason that CTH 81029590, as declared by the appellant covers only flats surfaced products of solid rectangular cross section such as plates/sheets/strip/foils. It was

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3 SCN
4 the Customs Act

held that since the imported items were curved and presented as finished articles like mirrors or shields, they no longer remained flat sheets but the 'articles of molybdenum'. Hence, the classification of the goods under CTH 81029590 as claimed by the importer-respondents was rightly denied by the adjudicating authority, and rightly had re-determined under CTH 81029900.

4.1 Learned DR further pointed out that the same importer, for the past imports had classified identical goods under CTH 81029900 (as claimed by the department) which indicated that the importer was aware of correct classification. The mis-classification of the same goods at the time of subsequent imports under such tariff item which attracts lesser customs duty is rightly held to be a deliberate act of mis-declaration committed with intention to pay less customs duty so as to evade the remaining. It is submitted that the findings of Commissioner (Appeals) that the impugned goods are flat surfaced products as different from flat products to deserve classification under CTH 81029590 are apparently wrong findings. Chapter Note 1(g) to Chapter 74 which is applicable *Mutatis mutandis* for the goods of Chapter 81 (heading 8102) is impressed upon which does not include the curved mirrors/shields. Since at the time of import, the goods were not presented in the form of sheets rather in the form of curved mirror/shields, the correct classification has to be under CTH 81029900. Thus Commissioner (Appeals) has wrongly held the declaration under CTH 81029590 as was declared by the importer as correct, thereby wrongly allowing the importers appeal.

4.2 It is further submitted that Rule 3(c) of General Rule of Interpretation[5] has rightly been applied. Rule 3(a) and/or Rule 3(b) of GRI have not been dealt in view of importer's own acknowledgment of two categories of "other" in heading No. 8102. The goods have wrongly been classified under such "other" category which comes first in heading 8102 in violation of Rule 3(c) of GRI. With these submissions and relying upon the decision of Hon'ble Supreme Court in the case of **Atul Glass Industries** versus **Collector of Central Excise[6],** the order of Commissioner (Appeals) is prayed to be set-aside. Learned DR has prayed for re-affirmation of both the orders-in-original. Both the departmental appeals are prayed to be allowed.

5. While rebutting these submissions, learned counsel for the respondent-importers has submitted that the imported goods i.e. Molybdenum Mirror and Shields" were correctly declared by the importer under tariff item No. 81029590 for the reason that the finish of the product is like that of mirror but actually it is a shield used in automobile lights so as to concentrate rays of lights into a beam. Being made of molybdenum, the product is appropriately classifiable under 8102. Since the molybdenum shield is cut from molybdenum sheet with a function of shielding it has rightly been held as shield of 810295 and the category "other" under the said sub heading. For the said reason, the findings of Commissioner (Appeals) are absolutely correct. Learned counsel also submitted that it was the responsibility of the adjudicating authority to conclusively establish that the change of classification of impugned item of 81029900 from the declared said

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5 GRI
6 1986 (25) ELT 473 (S.C.)

CTH was mandatory based on cogent grounds and evidence, however, the original adjudicating authority has not discharged the said liability. It is further submitted that the original adjudicating authority has wrongly jumped upon the Rule 3(c) of General Rules for Interpretation whereas the rules had to be followed sequentially and sub –rule (c) comes into picture if and only if the goods do not merit classification under Rule 3(a) or Rule 2 (b) of GIRs.

6. Learned counsel further mentioned that there was a clear cut assessment practice of the department to classify the impugned goods under CTH 81029590 at 5% duty only. The same product has been classified, in past, under both the entries in question. Hence, there was no uniform assessment practice of the department with respect to the impugned goods i.e. Molybdenum Shield/Mirror. The appellant has impressed upon the details of the 23 earlier Bills of Entries wherein the same product as the one in question got cleared between 6.4.2017 to 24.10.2019, the period which overlapse/covered under the impugned show cause notices. The Department has not denied the said fact.

7. Further, it is submitted that even in terms of Note (1) (g) of Chapter 74, the term plates/sheets/foil/mirror, the flat surfaced products of a uniform thickness, of shape other than rectangular or square of any size provided that they do not assume the character of articles or products of other headings. The item in question had not acquired the character of an 'article'. For this reason also, the classification of appellant is rightly held by the Commissioner (Appeals) under CTH 81029590. With these submissions, the order of Commissioner (Appeals) is prayed to be upheld and both the Departmental Appeals are prayed to be dismissed.

8. Having heard both the parties, perusing the entire records, the issue to be adjudicated is:-

Whether the imported goods i.e. "Molybdenum Shield and Mirror" are classifiable as plates/sheets/foils under CTH 81029590 attracting BCD @ 5% as claimed by the importer or the goods are classifiable as "other" articles of molybdenum under CTH 81029900 attracting BCD at 10% as was alleged by the Department.

9. To adjudicate the same, for most, we have perused the relevant entries:

Tariff Item	Description of goods	Unit	Rate of duty	
			Standard	Preferential Areas
(i)	(2)	(3)	(4)	(5)
8102	**Molybdenum and articles thereof, including waste and scraps**	Kg.	5%	-
8102 10 00	- Powder - Other			
8102 94 00	-- Unwrought molybdenum, including bars and rods obtained simply by sintering, profiles, plates sheets, strips and foils	Kg.	5%	-
8102 95	-- Bars and rods, other than those obtained simply by sintering, profiles, plates, sheets, strip and foil:			
8102 95 10	--- hollo bars	Kg.	5%	-
8102 95 90	--- Other	Kg.	5%	-
8102 96 00	-- Wire	Kg.	5%	-
8102 97 00	-- Waste and Scrap	Kg.	5%	-
8102 99 00	-- Other	Kg.	10%	-

The perusal of the entry clarifies that tariff item 8102 includes molybdenum and articles thereof including waste and scrap in the form of powders & other articles, as is apparent from tariff entry No. 81021000. The other molybdenum/articles thereof can be

(i) Unwrought molybdenum of 810294400

(ii) Bars and rods etc. of 810295 which can be:

(a) Hollow bars of 81029510 (b) other kind of bars/rods of 81029590

(iii) Wire of 81029700

(iv) Waste and scrap of 81029900 and

(v) "other" kind of "other" molybdenum articles

10. It is clear from the above observation that the hollow bars of 81029510 and "others" of 81029590 have three dashes (---) which means that the products of both these entries have to be the Bars and Rods other than those obtained simply by sintering, profiles plates, sheets, strips and foil of 810295. Thus, the molybdenum product classifiable under 81029590 as declared by the importer-respondent has to be in the forms Bars and Rods other than those obtained simply by sintering profiles plates, sheets, strip and foil of 810295. The tariff item/CTH 81029900 as claimed by the department covers other kind of other molybdenum and article thereof.

11. To adjudicate the aforesaid issue, the sole consideration, therefore, is whether the imported goods are in the form of Bars/Rods or in the form of Molybdenum and articles thereof.

For the purpose, we have perused Chapter Note 1 of Chapter 74 apparently defines Bars and Rods, profiles/wire and plates, sheets, strips and foils which is referred by both the parties and has been dealt with by the original adjudicating authority. From the note it is also apparent that these definitions *Mutatis mutandis* apply to chapter 81 also i.e. vis-a-vis the impugned imported goods. Since the importer is claiming the imported goods as plates, sheet/stript

and foil, the said definition in sub-clause (g) of said Chapter Notes perused. It reads as follows:-

> **g) Plates, sheets, strip and foil:-**
> Flat-surfaced products (other than the unwrought products of heading 74.03), coiled or not, of solid rectangular (other than square) cross-section with or without rounded corners (including "modified rectangles" of which two opposite sides are convex arcs, the other two sides being straight, of equal length and parallel) of a uniform thickness, which are :
> (i) - of rectangular (including square) shape with a thickness not exceeding one-tenth of the width,
> (ii)- of a shape other than rectangular or square, of any size, provided that they do not assume the character of articles or products of other headings.
> Headings 74.09 and 74.10 apply, inter alia, to plates, sheets, strip and foil with patterns (for example, grooves, ribs, chequers, tears, buttons, lozenges) and to such products which have been perforated, corrugated, polished or coated, provided that they do not thereby assume the character of articles or products of other headings.

The perusal makes it clear that it is flat surfaced products of solid rectangular cross section which can be called as plates, sheets, strips and foils. The two opposite sides of such flats solid rectangular may have convex arcs.

12. Reverting to the impugned goods, there is no denial that it is the molybdenum curved mirror, impressed upon as shield by the importer. We observe that the importer, in his statement, has acknowledged that the molybdenum sheets were curved in order to suitably act as shield/distributor of light beam fitted on to low beam filament of halogen in automobile lights. The admission is sufficient to hold that the product was not the flat surfaced product anymore because it was not merely the two sides of molybdenum sheets which got convexed/curved but the sheet as such was got curved to be called as molybdenum mirrors & shields. Once the sheet is cut, curved and shaped to act as shield/distributor of light beam in lamps, it ceases to be a "sheet" and becomes an article of

molybdenum. Admissions are the best evident which needs no further proof. Also the product was examined as curved product at the time of examination as is coming apparent from the show cause notice itself. Just because the nomenclature of product is shield, it cannot be held as flat surfaced product or as flat product. The distinction created by Commissioner (Appeals) is illusionary. Therefore, classification under CTH 8102 99 00 ("other articles of molybdenum") is correct, not 8102 95 90. The Supreme Court in **Atul Glass Industries v. Collector of Central Excise [1986 (25) E.L.T. 473 (S.C.)** applied a pivotal principle of classification under the Excise Tariff Act. It held that a glass mirror, though manufactured from a glass sheet, undergoes such transformation that it no longer retains the fundamental character of a "glass piece"-it becomes a "mirror" with distinct identity and function, warranting classification under the residual tariff and not under "glass". By parity of reasoning, "molybdenum mirrors and shields", though produced from molybdenum sheets / Foils etc., have acquired a new and specialized identity through manufacturing and functional purpose-as reflective or protective articles. They are not perceived in trade as "molybdenum sheets" and ought to be classified as "finished articles of molybdenum", not under the tariff for plates/sheets/strips/foils.

13. As per General Rules of Interpretation, Rule (1), the classification has to be determined according to the terms of headings and any relevant section or Chapter Notes, Rule 2 thereof requires that even the incomplete or unfinished article if has the essential character of the complete or finished article. It has to be

considered as the complete/evidence article. Rule 3 of GRI comes into picture whereby applying Rule 2, the goods are prima facie classifiable under 2 or more headings. In that scenario, foremost the heading which provides the most specific description shall be preferred to the heading providing a general distinction as per sub-clause (a) of Rule 3. Sub-clause (b) of Rule 3 deals with the classification of mixture, composite goods, consisting of different materials.

14. In the present case, admittedly, CTH 8102 has two "others" at CTH 81029590 as claimed by the appellant and CTH 81029900 as claimed by the department. There is no specific description in any of these entries, hence, Rule 3(a) is rightly held in applicable by the original adjudicating authority. The product in question is admittedly not a composite product/mixture. Applicability of Rule 3(b) does not at all arises. This observation is sufficient for us to hold that the original adjudicating authority has rightly applied Rule 3 (c) of GIR. According to which when goods cannot be classified by reference of Rule 3 (a) or Rule 3 (b), they shall be classified under heading which across last in the numerical order among those which equally merit consideration. In the present case, the heading occurring later is 81029900 as claimed by the appellant. Seen from this Rule also, we hold that the original adjudicating authority has rightly classified the imported goods under the later entry of 8102 i.e. under 81029900.

15. The submission of both the parties with respect to the earlier bills of entries is not relevant to be considered as the fact emerges from those documents is that the contradictory

assessment at different points of time. We are not bound by the declarations either of the department or of the importer, however, follow the aforesaid adjudication.

16. In the light of the above discussion, we decide the afore framed issue in favour of the department holding that the molybdenum mirror and shield imported by the respondent-importer are classifiable under 81029900, those not being the flat sheet of molybdenum but the curved and laminated surface merely nomenclature of shield also is in sufficient to take away the character of curved surfaced. The issue, therefore, stands decided in favour of the department.

17. As a result, the order of Commissioner (Appeals) reversing both order-in-originals is hereby set-aside. The findings of the said order-in-originals are re-affirmed. Consequent thereto, both the appeals filed by the department are hereby allowed.

(Order pronounced in the open Court on 29.04.2026)

(RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

G.Y.