

Instruction No. 07/2017-Customs

F. No. 528/07/2017-STO (TU)
Government of India
Ministry of finance
Department of Revenue
Central Board of Excise & Customs
(Tariff Unit)

Room No. 229-A, North Block
New Delhi, 6th June, 2017

To

All Pr. Chief Commissioners/Chief Commissioners of Customs/ Customs (Preventive)
All Pr. Chief Commissioners/Chief Commissioners of Customs/Customs and Central Excise
All Pr. Commissioners/Commissioners of Customs/Customs (Preventive)
All Pr. Commissioners/ Commissioners of Customs and Central Excise

Madam/Sir,

Subject: Classification of Dioctyl Orthophthalate (DEPH) – Reg.

References have been received in the Board from field and Trade regarding the correct classification of Dioctyl orthophthalate (DEPH). A doubt has been expressed whether the said goods are classifiable under tariff item '2917 32 00 - - *Dioctyl orthophthalate*' or under *tariff item* '2917 39 20 - - - *Dioctyl phthalate*'.

2. Trade is of the view that Dioctyl Orthophthalate (DEPH) is also known as Dioctyl Phthalate (DOP). Although both terms refer to single product but in the Customs Tariff, there are two classifications for the same product i.e. 2917 32 00 & 2917 39 20. Therefore, in terms of chapter Note 3 to the chapter 29, goods which could be included in two or more of the headings of this Chapter are to be classified in that one of those headings which occurs last in numerical order. According to this view the product merits classification under CTH 2917 39 20. This view is controverted by field formations who are of the opinion that DEPH is classifiable under tariff item - - 2917 32 00.
3. Board examined the issue and in this regard it is clarified that:
 - a. The product under examination is Dioctyl orthophthalate (DEPH) which may be referred by a common name [i.e. Dioctyl phthalate (DOP)] or by IUPAC name [bis(2-ethylhexyl) benzene-1,2-dicarboxylate] or by any other name in chemistry or in trade parlance.
 - b. Chapter Note 3 of Chapter 29 provided that goods which could be included in two or more of the headings of chapter 29, are to be classified in one of those headings which occurs last in numerical order. The said chapter note 3 reads as:

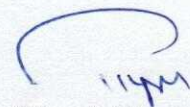
“Goods which could be included in two or more of the headings of this Chapter are to be classified in that one of those headings which occurs last in numerical order.”

However, sub-heading note 2 of the chapter 29 further states that "Note 3 to this chapter shall not be applicable to the sub-headings of this Chapter."

Therefore, by virtue of sub-heading Note 2, the classification principle in Note 3 is not applicable to the item under consideration because the competing sub-headings are "2917 32" [converted into tariff Line - - 2917 32 00] and "2917 39" [one of the tariff line of the sub-heading is - - - 2917 39 20]. Further, the dispute in this case is not between two headings (the competing tariff items are both within CTH 2917), therefore, chapter Note 3 would not be available in deciding the classification.

- c. HSN provides a specific entry for the ortho variety of dioctyl-phthalate in 2917.32 which upon conversion to 8-digit entry (Indian Tariff) finds mention as '2917 32 00 - - Dioctyl orthophthalate'. The other competing sub-heading is 2917 39 mentioned as - - Other. This sub-heading has been further sub-divided at the 8-digit level from 2917 39 10 to 2917 39 90. Since for Dioctyl orthophthalate there is a specific sub-heading i.e. 2917 32 - - Dioctyl orthophthalate, it shall therefore take precedence over the residual sub-heading i.e. 2917 39 - - Other. This further clearly implies that the other varieties i.e. meta (also known as iso) and para (also known as tere) would be covered under the residuary entry 2917.39 (2917 39 20) and not under 2917 32 00.
- d. Seemingly, it appears that an entry in the tariff [- - - 2917 39 20, dioctyl-phthalate] would appear to cover all three isomers of dioctyl-phthalate as contended by the trade. However, such an interpretation would be erroneous as DEPH (ortho isomer) is already figuring at [- - 2917 32 00] and it is inconceivable that DEPH would also be classifiable under [- - - 2917 39 20] in the same heading under residuary entry 'other'.
- e. Lastly, in the EN to HSN, there is a mention that phthalic acid is also known as orthophthalic acid, therefore, by this analogy Dioctyl orthophthalate would be same as Dioctyl phthalate and thus tariff item - - - 2917 39 20 should prevail as far as classification of DEPH is concerned.
- It is clarified that the HSN does not contain the entry - - - 2917 39 20 Dioctyl phthalate. Therefore, this definition shall not be applicable to tariff item 2917 39 20. Classification of DEPH shall remain under tariff item - - 2917 32 00.
- f. Board is therefore, of the view that meta and para variety alone of dioctyl-phthalate shall be classified under tariff item - - - 2917 39 20. Dioctyl orthophthalate (DEPH) shall continue to be classified under tariff item - - 2917 32 00.
4. All pending assessments, if any, may be finalized accordingly.

Yours faithfully,



(Piyush Bhardwaj)
STO (TU)