



C. No. (30)KAPE - (PCT) 2016

Dated: 12 -06-2017

Public Notice No. 09 /2017 (Classification)

Subject: **CLASSIFICATION OF "POLYMERIC DIPHENYLMETHANE DIISOCYANATE (MDI)".**

FACTS:

Model Customs Collectorate, Appraisement, Lahore, forwarded a reference for the classification of 'Polymethylene Polyphenylene Isocyanate Wannate PM-2010' (Polymeric MDI), imported by M/s Orient Electronics (Pvt) Ltd. vide GD No. LAPR-HC-2039 dated 11-08-2016, declared under PCT heading 3824.9091. The Collectorate is of the view that the afore-said item is correctly assessed by the Collectorate in PCT heading 3909.3000 in the light of lab test report and Explanatory Notes to HS Chapter 39 issued by WCO in 52nd Session in September, 2013 wherein it was held that the goods polymeric Diphenylmethane Di-isocyanate are classifiable under in HS 3909. However, M/s. Akhtar Ali & Associates on behalf of traders contested the classification on the basis of Public Notice No. 15/2005(A) dated 14.09.2005 issued by the Classification Committee in respect of an item namely Suprasec (DNG-2) (Di-isocyanate Diphenylemethane) and its letter dated 27.12.2014 wherein classification of item namely Wannate 8019 was decided in PCT heading 3824.9091. The Collectorate also informed that earlier they had referred the matter to FBR and the Board vide letter C. No. 3(2)Tar-I/2014-Pt-I dated 18.11.2016 directed the Collectorate to refer the matter to Classification Committee for obtaining fresh ruling. The Board also directed to allow clearance of MDI under PCT 3824.9091 as per the existing practice till decision of the Classification Committee.

2. In response to the Collectorate's letter, the Classification Committee gave its opinion vide letter of even No. dated 02.12.2016 wherein it was opined that all polymeric MDIs poly(methylene phenyle isocyanate) are classifiable under HS 3909.3000 on the basis of amendment to HS Explanatory Notes approved by WCO HS Committee in its 52nd Session held in September, 2013; however, the Committee concluded that in wake of the existence of National Heading 3824.9091 all types of polymeric MDIs are classifiable under PCT heading 3824.9091 till the said heading is deleted from PCT . The Directorate of I & I, however, vide its letter C.No.

Appg-41-C/DCI/R&A/MDI/2016 dated 30.12.2016 expressed its disagreement with the opinion of the Classification Committee. The said letter of the Directorate was also forwarded to the FBR by Director General, I & I vide letter C.No. 1(1)DGCI/Enf/Hqrs/2017 dated 20.02.2017. Later on, the Board vide its letter C. No. 3(2)Tar-I/2014-Pt-I dated 07.03.2017 withdrew its earlier letter dated 18.11.2016 abinitio and referred the matter to classification Committee for reconsideration after giving all stakeholders opportunity of being heard.

3. The Directorate of I & I's contention was mainly based on following points:
- i. The opinion has been issued without considering HEJ Lab's test reports in respect of imported goods and other identical/similar goods whereby the same were found to predominately contained polymeric / PMDIs i.e. poly(diphenylemethan diisocyanate),
 - ii. No opportunity was provided by the Classification Committee to the Directorate General to present its case before concluding the classification opinion,
 - iii. That the national PCT sub-heading 3824.9091 in First Schedule to Customs Act, 1969 specifically covers the item MDI i.e. diphenylemethan diisocyanate only and not polymeric MDI / crude MDI or poly(diphenylmethane diisocyanate).
 - iv. That by virtue of Explanatory Note to HS 3909, poly(methylene phenyl isocyanate) often referred to as "crude MDI", "polymeric MDI" or "poly(diphenylmethane diisocyanate)" is classifiable under PCT heading 3909.3000.
 - v. That by virtue of General Rules for Interpretation of the First Schedule, Pakistan Rules, Rule (1), it is specifically laid down that:

"1. For the purposes of interpretation, "Explanatory Notes to the Harmonized Commodity Description and Coding System" (2012 version) published by World Customs Organization, Brussels **as amended from time to time** shall be considered authentic source of interpretation."

Since the above Rule is already an integral part of First Schedule approved by the Parliament through Finance Act, no further legislation is required to implement the WCO's amendment in Explanatory Notes to HS 3909 approved in its 52nd Session held in September, 2013.

- vi. That classification of the item Wannate 8019 referred in para (3) of PCT Committee's above referred letter was correctly determined by the PCT Committee in PCT heading 3824.9091 as on lab test this item was found to be a mixture containing **50-40% diphenylemethane diisocyanate (MDI)**, **40-20% polymeric MDI** and **10-30% pre-polymer MDI and polyether polyol**. Similarly

the classification of item Suprasec (DNJ-2) which was found to predominantly contain diphenylemethane diisocyanate was correctly decided as MDI under PCT heading 3824.9091 vide Public Notice No. 15/2005(A) dated 14.09.2005. On the contrary in the instant cases of Wannate PM-2010, Wannate PM-8221, Cosmonate M-200, Millionate MR-200 and Lupranate M20S the mixtures have been found to contain over 62% by weight polymeric MDI. Hence, such items are correctly classifiable under PCT heading 3909.

- vii. That both the items i.e. diphenylemethane diisocyanate and polymethylene polyphenylene isocyanates are separately defined chemicals having separate CAS numbers i.e. 101-68-8 and 9016-87-9 respectively.
- viii. That the under-reference items are correctly being released by the Collectorates under PCT heading 3909.3000 on the basis of lab test report and relevant literature. Since the Explanatory Note to HS 3909 is quite clear and unambiguous no further legislation is required.
- ix. That under-reference items are being declared / cleared at the port of load from exporting countries under HS 3909.3000 as polymeric MDIs.

Accordingly, the classification Committee held its various meetings on 01.12.2016, 09.01.2017, 03.02.2017, 15.03.2017, 22.03.2017, 28.03.2017 & 06.04.2017 wherein all main stakeholders i.e. importers and representatives of department (Collectorates & Directorate of I & I), importers' representatives and technical experts of Custom House Lab and HEJ also participated. Lateron, the Chief Collector Appraisalment (South), on a representation of M/s Pakistan Plastic Manufacturers Association dated 05-06-2017, directed to convene a fresh meeting of Classification Committee to provide the Associations to represent their view point.. Accordingly, another meeting of the Classification committee was convened on 06-06-2017 and all participants along with Mr. M.N Vohra representing the Association attended the meeting.

PRODUCT ANALYSIS:

5. The imported product, as per declaration, is "Polymethylene Polyphenylene Isocyanate PM 2010". According to lab Report through CH Lahore Lab "On chemical test in the light of literature is found to be Polymeric MDI based on (Poly methylene Phenyl Isocyanate) and its oligomers as such it qualifies to the qualitative composition of Chemically modified Amino resin. It is dark brown colored thick liquid and may find its uses as one part of two components Polyurethane foam manufacturing system insulation so as the heat may not be lost .Whether it is classified U/Heading 3909.3000 of PCT as per amended HS Notes or otherwise may please be

looked, by appraising in the light of literature, amended HS Notes as per specific use of product”.

6. Since the item Polymeric MDI is imported under different trade names apart from the impugned item imported by M/s Orient Electronics (Pvt) Ltd., the classification Committee examined other items imported under trade names Wannate PM-2010, Wannate PM-8221, Cosmonate M-200, Millionate MR-200 and Lupranate M20S imported from various origins/suppliers. The Committee also referred to the test reports submitted by Industrial Analytical Centre, HEJ Research Institute of Chemistry, University of Karachi which had analyzed the representative samples of above named products and submitted its reports in respect of consignments imported by various importers’ whereby the same were found to be mixtures of Polymethylene Polyphenyl Polyisocyanate (Polymeric MDIs) and 4,4 Methyl Diphenyl Isocyanate (MDIs) with following composition / percentage of contents:

S. No.	Item Name	% of Polymeric MDI (Polymethylene Polyphenyl Polyisocyanate)	% of MDI (4,4 Methyl Diphenyl Isocyanate)
i.	Wannate PM-2010	62.61	37.39
ii.	Wannate PM-8221	81.77	18.22
iii.	Millionate MR-200	62.27	37.72
iv.	Cosmonate M-200	62.22	37.78
v.	Lupranate M20S	65.37	33.53

Test reports conclude the products to be mixtures of Polymethylene Polyphenyl Polyisocyanate (Polymeric MDIs) and 4,4 Methyl Diphenyl Isocyanate (MDIs).

ISSUE:

7. Whether the imported ‘Polymeric MDI’ is appropriately classified under HS Code 3824.9091 as claimed by the importer and held by Classification Committee vide Public Notice No. 15/2005(A) dated 14.09.2005 and vide letter dated 27.12.2014; under HS Code 3909.3000 as proposed by the clearance Collectorate and Directorate of I & I, or under any other relevant Heading of the First Schedule to the Customs Act, 1969 (Pakistan Customs Tariff)?

LAW AND ANALYSIS:

8. The Committee deliberated on the issue and examined the submissions of all stake holders. M/S ICI, one of the importers, vide their letter contested that the classification of

mixture of polymeric MDI and pure MDI falls within PCT 3824.9091. Their contention was based on following points:

- a) Their imported product is not an organic compound to be classified in chapter 29 as per Rule 1(a) to chapter 29 nor is it polymer to be classified in chapter 39 as per Rule 4 of chapter Notes –Rather it is mixture of the two which qualifies classification in HS Code 3824.9091.
- b) In light of Explanatory notes (2012) only those polymeric MDIs are to be classified in HS Code 3909.3000 which has an average monomer units b/w 4 and 5. All polymeric MDI imported in Pakistan have functionality i.e. of number monomers 2.4 and 2.7 below 4 hence they do not fall within Preview of HS Code 3909.3000.
- c) The PCT Committee in 2005, and 2016 and FBR vide letter C. No. 3(2)Tar-I/2014-Pt-I dated 18.11.2016 has held that the item falls within 3824.9091.
- d) Any decision of PCT committee should be prospective and not retrospective.
- e) The Directorate of I&I's case is based on 52 Session of WTO and it should be effective when it is being adopted by Pakistan.

9. During the meeting held on 06.04.2017, the AR of M/s ICI Pakistan Limited argued that the item imported today which is held as polymeric MDI is the same item imported in Pakistan since 1995 with different trade names by different importers for which a national heading has been created as 3824.9091 and all types of MDIs irrespective of their composition have been cleared / classified in this HS Code. The issue arose after the 52nd Session of WCO which held that polymeric MDI / crude MDI is classified in HS Code 3909.3000. Mr. Imran the legal advisor through his written reply submitted that HEJ report confirms that their item is mixture of Pure MDI and Polymeric MDI which means MDI whereas the department is classifying their goods in the HS Code which is meant for "Amino Resin". He submitted that their product is polymeric MDI not amino resin, hence it should be classified under HS Code 3824.9091. The Chairman, Pakistan Plastic Manufacturer Association reiterated the point laid down earlier that in view of national Heading, decisions of Classification Committee and Board's clarification, the product is to be classified in HS Code 3824.9091. Another stake holder i.e. M/s Orient Electronics (Pvt) Ltd. participated in Classification Committee meeting held on 09.01.2017 through their authorized representative Mr. Inaam Rahmani and Mr. Farrukh Saleem wherein they viewed that their product is classifiable under HS Code 3824.9091. Moreover, they emphasized that changes adopted by WCO in its 52 Session in 2013 should be effective when it is being adopted by Pakistan.

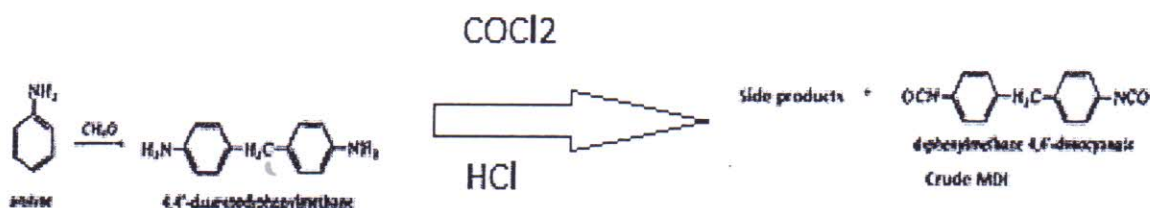
Mr. Akhtar Ali of M/s Akhtar Ali Associates, AR of the importer initially vide their letter dated 06.02.2017, expressed their reservations on calling meetings by Classification Committee as in their opinion the appeal against Chairman Classification Committee's letter dated 02.12.2016 only falls before FBR and proceedings cannot be initiated without Board's approval. Later on, in response to the other notice for the meeting on 25.03.2017 they requested adjournment for two weeks vide their letter dated 27.03.2016. They submitted another adjournment request vide their letter dated 04-04-2017.

10. The DR of Appraisement Lahore submitted that the goods imported by M/s Orient Electronics (Pvt) Ltd are polymeric MDI as confirmed by test report hence they are to classify under HS Code 3909.3000 in light of Explanatory notes. The DR of Directorate of I&I reiterated their view point as expressed in their letter quoted above. They further submitted that the national heading 3824.9091 is the heading of mixture and was created for modified MDI which is obtained by mixing (reaction) of MDI and Polyol. He cited example of item WANATE 8019 which has been correctly classified by department under HS Code 3824.9091. For the items Polymeric MDI / crude MDI, he reiterated that since it is not MDI, it is classifiable under HS Code 3909.9000. He also cited many GDs of exporting country (China) wherein the items claimed by importer M/s ICI under PCT 3824.9091 have been classified in HS Code 3909.3010 i.e. the code for Polymeric MDI.

11. After threadbare appraisal of viewpoints of all stake holders and in light of opinion of technical experts from HEJ Institute (Dr. Shakil Ahmed) as well as chemical examiner of Custom House Lab (Mr. Shams-uz-Zaman), the Committee observed that there are three types/forms of MDIs which are imported into Pakistan.

- a) Crude MDI (Mixture of pure MDI and Polymeric MDI/MDI Oligomers)
- b) Pure MDI (4,4'- methylenediphenyl diisocyanate)
- c) Modified MDI (Prepolymer of polyurethane)

a) **Crude MDI (Mixture of pure MDI and Polymeric MDI/MDI Oligomers):-** Crude MDI is synthesized by reaction of aniline with formaldehyde in presence of Hydrochloric acid as a catalyst to produce diamine which is treated with phosgene to form crude MDI i.e. (mixture of MDI and PMDI) which is also referred to as polymeric MDI.



Crude MDI is mixture of pure MDI (2,2'-MDI, 2,4'-MDI, and 4,4'-MDI) and Polymeric MDI/MDI Oligomers. It is appropriately classifiable under HS Code 3909.3000 in light of Explanatory Notes 2013 version which is reproduced below:-

“Poly(methylene phenyl isocyanate) (often referred to as “crude MDI”, “polymeric MDI” or “poly(diphenylmethane) diisocyanate”) is an opaque, dark brown to clear, light brown liquid and is synthesised by reaction of aniline and formaldehyde to form a mixture of (methylenephenylamine) oligomers, which is subsequently reacted with phosgene and heat to form freeisocyanate functions. The product is a chemically modified polymer of aniline and formaldehyde(a chemically modified amino-resin). It contains pure MDI and MDI oligomer mixtures.”

12. It is however incorrect to conclude that WCO, in its 52nd Session held in 2013, determined that crude MDI or polymeric MDI is classifiable in HS Code 3909.3000 as misconstrued by many stakeholders. Even in light of 2007 version of the Explanatory Notes, the item crude MDI or Polymeric MDI was classifiable under HS Code 3909.3000. The relevant portion of the Explanatory Notes 2007 (2929.1000) which excludes crude MDI or polymeric MDI from chapter 29 and includes it in chapter 39 is reproduced below:-

*“This heading **excludes** poly(methylene phenyl isocyanate) (crude MDI or polymeric MDI) (heading 39.09).”*

b) **Pure MDI (4,4'-methylenediphenyl diisocyanate):-** Pure MDI (2,2'-MDI, 2,4'-MDI, and 4,4'-MDI) predominantly 4,4'-MDI is a monomer (single compound) of MDI which is obtained by distillation/purifying crude MDI. It is classifiable under HS Code 2929.1000 under the heading “Isocyanates” in the light of Explanatory Notes. Relevant Portion of Explanatory Note is reproduced as under:

“This group of chemicals includes mono- and polyfunctional Isocyanates. Isocyanates with di- or higher functionality, such as methylene diphenyl Isocyanate (MDI), hexamethylene diisocyanate (HDI), toluene diisocyanate (TDI) and toluene diisocyanate dimer, are used extensively in the manufacture of polyurethanes.”

c) **Modified MDI / Prepolymer of polyurethane**

Modified MDI is a form of partially reacted MDI/PMDI and un-reacted monomer of MDI/ PMDI and is also called Prepolymer of Polyurethane. It is obtained through partial reaction of MDI (mainly crude/polymeric MDI) with Polyol and contains un-reacted monomer of MDI/ polymeric MDI for further reaction with Polyol to form polyurethane. It is appropriately classifiable under HS Code 3909.5000 in light of Explanatory Notes to chapter 3909.5000 relevant portion of which is reproduced below:

“This group also includes mixtures of polyurethane and unreacted polyfunctional diisocyanate (e.g., toluene diisocyanate).”

13. The Committee noticed that the confusion between MDI and Polymeric MDI arose with the creation of National Heading 3824.9091 in the year 2002-03 when the item Diphenyl methane (Di-isocyanate) (MDI) was inserted in Pakistan Customs Tariff under PCT 3824.9091. However, detailed scrutiny led the Classification Committee to the conclusion that the said insertion in Chapter 38 was duplication as the item MDI was already covered under Chapter 29 in the HS Code 2929.1000 under the heading Isocyanate as explained in Para 12(b) above. There is nothing on record to suggest that the national heading 3824.9091 was created to classify Polymeric or crude MDI in this Heading. Hence the Classification Committee holds that the imported item under discussion i-e “Polymethylene Polyphenylene Isocyanate Wannate PM-2010 (Polymeric MDI)”, which is confirmed through lab tests, conducted through Custom House Lab and HEJ Lab, as mixture of pure MDI and polymeric MDI, is classifiable under HS Code 3909.3000 in light of Explanatory Notes to HS Code 39.09.

HOLDING:

14. In view of the above, the impugned product ‘Polymethylene Polyphenylene Isocyanate Wannate PM-2010’ (Polymeric MDI) is appropriately classifiable under 3909.3000, through application of GRI 1.

15. This Classification Ruling is based on the product information provided by the importing company, concerned Collectorate and the lab-test report and shall be treated as

annulled, if it is found, at any subsequent stage, that the same was obtained by providing incorrect, false, misleading or incomplete information by the applicant / Collectorate.




(Muhammad Haris Ansari)


Additional Collector-I

Chairman Classification Committee

Distribution:

1. PS to Member (Customs), Federal Board of Revenue, Islamabad.
2. Chief Collector of Customs (Appraisalment-South), Custom House, Karachi.
3. Chief Collector of Customs (Enforcement-South), Custom House, Karachi.
4. Chief Collector of Customs (Central/North) Custom House, Lahore / Islamabad.
5. Director General, Intelligence & Investigation-FBR, Mauve Area-1, G-10/4, Islamabad.
6. Chief (Tariff), Customs Wing, Federal Board of Revenue, Islamabad.
7. Collector, MCC Appraisalment (East) / (West) / (Preventive), Custom House, Karachi.
8. Collector of Customs MCC, Port Mohammad Bin Qasim, Karachi.
9. Collector of Customs, MCC (Appraisalment/Preventive) Lahore.
10. Collector, MCC Hyderabad / Gawadar / Quetta/ Multan / Sambrial / Faisalabad / Islamabad / Peshawar / Gilgit-Baltistan.
11. Director, Directorate of Customs Post Clearance Audit, 3rd Floor, Custom House, 24 Mauve Area, G-9/1, Islamabad
12. Director, Directorate of Intelligence & Investigation (Customs), Karachi / Lahore / Faisalabad / Rawalpindi / Quetta / Peshawar.
13. Collector of Customs Adjudication I & II, Customs House, Karachi.
14. Collector, MCC (Adj/Appeals), Lahore / Faisalabad / Rawalpindi / Peshawar / Quetta.
15. Secretary Customs Tariff-I, Federal Board of Revenue, Islamabad.
16. M/s Orient Electronics (Pvt) Ltd, 26-K, Multan Road, Lahore
17. Mr. Amjad Chughtai, Shipping Manager, ICI Pakistan Ltd, ICI House, 5, West Wharf, Karachi.
18. Pakistan Plastic Manufacturers' Association, Suit N0. 8, Estate Avenue, Opposite S.I.T.E Post Office, S.I.T.E, Karachi.
19. Karachi Chamber of Commerce & Industry, Karachi.
20. Karachi Customs Agents Association, Custom House, Karachi.
21. Notice Board.
22. Master File.


15/6/2017
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Office Secretary
Karachi Customs Agents Association


Wasiq Hussain Khan
General Secretary
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