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REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF CUSTOMS

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07 May 2024

CUSTOMS MEMORANDUM CIRCULAR
NO. 88-2024

TO : ASSISTANT COMMISSIONER
ALL DEPUTY COMMISSIONERS
ALL DIRECTORS AND DIVISION CHIEFS
ALL DISTRICT AND SUB-PORT COLLECTORS
ALL OTHERS CONCERNED

SUBJECT : TARIFF CLASSIFICATION DISPUTE RULING

This has reference to the herein attached Tariff Commission Circular Dispute Ruling (TCC DR) No. 22-040 issued on 02 May 2024 pursuant to Paragraph 2 of Section 1100 of Republic Act No. 10863, otherwise known as Customs Modernization and Tariff Act, on the shipment of "PS45, PS46, and PW47 Ear Muffs," from Great Britain consigned to GLJM Diversified Sales and Services Corporation, (Import Entry/ Customs Reference No. C-138528, Ninoy Aquino International Airport), the dispositive portion of which states that:

"WHEREFORE, premises considered, subject article is hereby classified as follows:

Product	AHTN 2022 Code	2022 MFN Rate
PS45, PS46, and PW47 Ear Muffs	3926.90.49	15% ad valorem

For record purposes, please confirm the dissemination of this circular throughout your offices within fifteen (15) days from receipt thereof.

For strict compliance.

BIENVENIDO Y. RUBIO
Commissioner
MAY 20 2024



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REPUBLIC OF THE PHILIPPINES
TARIFF COMMISSION

09-48325

RE: REQUEST FOR TARIFF CLASSIFICATION
DISPUTE RULING ON "PS45, PS46, AND PW47
EAR MUFFS" CONSIGNED TO GLJM DIVERSIFIED
SALES AND SERVICES CORPORATION

TCC (DR) NO. 22-040

(Import Entry/Customs Reference No. C-138528,
NAIA)

Issued on: 02 May 2024

TARIFF CLASSIFICATION DISPUTE RULING

Before this Commission is a request for a Tariff Classification Dispute Ruling (TCDR), pursuant to Paragraph 2 of Section 1100 of Republic Act No. 10863, otherwise known as the Customs Modernization and Tariff Act (CMTA), on the shipment of PS45, PS46, and PW47 Ear Muffs, imported by GLJM Diversified Sales and Services Corporation (Importer/Consignee) from Great Britain. The request of the Importer/Consignee for a TCDR was accepted by this Commission on 01 December 2022.

The shipment of the said subject articles, declared under ASEAN Harmonised Tariff Nomenclature (AHTN) 2022 subheading 6506.99.90, with a Most Favoured Nation (MFN) rate of duty of 7% *ad valorem*, was processed under Import Entry/Customs Reference No. C-138528 at the Bureau of Customs (BOC), Ninoy Aquino International Airport (NAIA). The BOC contested the declared heading and reclassified subject articles under AHTN 2022 subheading 3926.90.49, with an MFN rate of duty of 15% *ad valorem*.

Hence, this request for a TCDR.

On 04 April 2023, the Commission reminded the Importer/Consignee, via electronic mail (email), of the lacking documents in their request for TCDR. In response, on 14 April 2023, the Importer/Consignee submitted the following documents:

- a) BOC's Discrepancy Report for Tentative Release containing the Bureau's assessment/tariff classification of subject articles;
- b) the final BOC Single Administrative Document (SAD) for subject importation; and
- c) Importer/Consignee's affidavit or certification under oath that the goods are not subject of a pending application for Advance Ruling on Tariff Classification.

Pursuant to Section 7.3 of Commission Order No. 2018-01, this Commission requested the concerned BOC District Collector on 09 August 2023 for comments on the request for TCDR on PS45, PS46, and PW47 Ear Muffs. To date, the Commission has not received any comment from the BOC-NAIA, hence, it proceeded to evaluate the classification of subject articles based on the submissions received from the Importer/Consignee.

In the evaluation of disputes on tariff classification, Section 8 of Commission Order No. 2018-01 provides that this Commission, if it deems necessary, shall conduct a hearing to clarify the facts necessary to resolve the pending disputes in tariff classification. In the present case, however, this Commission found that the submissions of the Importer/Consignee were sufficient to make a correct determination on the tariff classification of the subject articles. A hearing, therefore, is no longer necessary.

After due examination of the submitted brochures and technical information, it is established that subject articles are as follows:

PS45 Ear Muff is a hearing protection device consisting of two ear cups with cushions and clip mechanisms that allows the device to be attached to the sides of a safety helmet. It is also equipped with an adjustable dual-pin system for a precise fit on the ears. Subject article is constructed from a combination of various materials, including acrylonitrile butadiene styrene (ABS), polyurethane (PU), polyvinyl chloride (PVC), polyoxymethylene, and stainless steel. It is designed for attachment to Endurance, Height Endurance, and Expertbase brands safety helmets.

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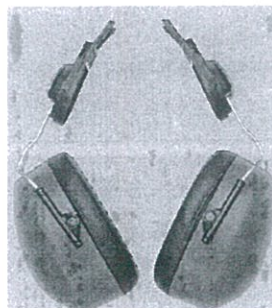
PS45 Ear Muff

PS46 Ear Muff, on the other hand, is also a hearing protection device comprising of two cushioned ear cups integrated to a padded headband. It is equipped with an adjustable dual pin system for a precise fit on the ears. Subject ear muff is constructed from a combination of materials, including acrylonitrile butadiene styrene (ABS), polyurethane (PU) foam, and polyvinyl chloride (PVC). The ear muff is intended to be worn directly over the head to provide protection for the ear.



PS46 Ear Muff

Lastly, PW47 Ear Muff is another hearing protection device consisting of two ear cups with cushions and clip mechanisms that allows the device to be attached to the sides of a safety helmet. It is also equipped with an adjustable dual-pin system for a precise fit on the ears. Subject ear muff is constructed from a combination of materials, such as acrylonitrile butadiene styrene (ABS), polystyrene, polyurethane (PU), and stainless steel. It is designed for attachment to Endurance, Height Endurance, Peak View, and PS51 brands safety helmets.



PW47 Ear Muff

The Importer/Consignee classified subject articles under Chapter 65 of the AHTN 2022 which covers *headgear and parts thereof*, specifically under heading 65.06. The said heading covers *other headgear, whether or not lined or trimmed*. The pertinent Harmonized System (HS) Explanatory Notes (EN) to this heading state that:

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"This heading covers all hats and headgear not classified in the preceding headings of this Chapter or in Chapter 63, 68 or 95. It covers, in particular safety headgear (e.g., for sporting activities, military or firemen's helmets, motor-cyclists', miners' or construction workers' helmets), whether or not fitted with protective padding or, in the case of certain helmets, with microphones or earphones.

The heading also covers :

- (1) Hats and headgear of rubber or plastics (e.g., bathing caps, hoods).
- (2) Hats and headgear of leather or composition leather.
- (3) Hats and headgear of furskin or artificial fur.
- (4) Hats and headgear of feathers or artificial flowers.
- (5) Hats and headgear of metal."

On the other hand, the BOC considered classification of subject articles based on their predominant constituent material/s, specifically under Chapter 39 of the AHTN 2022, which covers plastics and articles thereof.

Note 1 to Chapter 39 states that:

"1.- Throughout the Nomenclature the expression "plastics" means those materials of headings 39.01 to 39.14 which are or have been capable, either at the moment of polymerisation or at some subsequent stage, of being formed under external influence (usually heat and pressure, if necessary with a solvent or plasticiser) by moulding, casting, extruding, rolling or other process into shapes which are retained on the removal of the external influence."

Heading 39.26 of the AHTN 2022 covers other articles of plastics and articles of other materials of headings 39.01 to 39.14. The pertinent HS EN to this heading state that:

"This heading covers articles, not elsewhere specified or included, of plastics (as defined in Note 1 to the Chapter) or of other materials of headings 39.01 to 39.14.

They include :

- (1) Articles of apparel and clothing accessories (other than toys) made by sewing or sealing sheets of plastics, e.g., aprons, belts, babies' bibs, raincoats, dress-shields, etc. Detachable plastic hoods remain classified in this heading if presented with the plastic raincoats to which they belong.
- (2) Fittings for furniture, coachwork or the like.
- (3) Statuettes and other ornamental articles.
- (4) Dust-sheets, protective bags, awnings, file-covers, document-jackets, book covers and reading jackets, and similar protective goods made by sewing or glueing together sheets of plastics.
- (5) Paperweights, paper-knives, blotting-pads, pen-rests, bookmarks, etc.
- (6) Screws, bolts, washers and similar fittings of general use.
- (7) Transmission, conveyor or elevator belts, endless, or cut to length and joined end to end, or fitted with fasteners.

Transmission, conveyor or elevator belts or belting of any kind, presented with the machines or apparatus for which they are designed, whether or not actually mounted, are classified with that machine or apparatus (e.g., Section XVI). In addition, this heading does not cover transmission or conveyor belts or belting, of textile material, impregnated, coated, covered or laminated with plastics (Section XI, e.g., heading 59.10).

- (8) Ion-exchange columns filled with polymers of heading 39.14.
- (9) Plastic containers filled with carboxymethylcellulose (used as ice-bags).

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(10) Tool boxes or cases, not specially shaped or internally fitted to contain particular tools with or without their accessories (see the Explanatory Note to heading 42.02).

(11) Pacifiers (or "baby's dummies"); ice-bags; douche bags, enema bags, and fittings therefor; invalid and similar nursing cushions; pessaries; sheath contraceptives (prophylactics); bulbs for syringes.

(12) Various other articles such as fasteners for handbags, corners for suit-cases, suspension hooks, protective cups and glides for placing under furniture, handles (of tools, knives, forks, etc.), beads, watch "glasses", figures and letters, luggage label-holders.

(13) Artificial fingernails.

The heading excludes household articles such as dustbins and mobile garbage bins (including those for outside use)."

Based on the information provided, PS45 and PW47 Ear Muffs are both clip-on hearing protective devices designed to be used in conjunction with safety helmets. Unlike safety helmets, which are used to protect the head from impacts and falling objects, these ear muffs are used to protect the ears from noise. The subject articles are designed to be removable and interchangeable, allowing users to attach them to different types of safety helmets. This interchangeability underscores their distinct function and separates them from the integral structure of a safety helmet. Moreover, Chapter 65 only covers helmets and integral components of safety helmets.

On the other hand, subject PS46 Ear Muff is an ear protective device that is worn directly over the head of the user and is used to protect the user's ears from noise.

Considering subject articles' characteristics, being essentially safety and protective devices made predominantly of plastic materials, and by reference to Note 1 to Chapter 39 and the HS EN to headings 65.06 and 39.26, the Commission has determined that the subject ear muff models PS45, PS46, and PW47 are appropriately covered and classified under heading 39.26.

Based on the information received from the Importer/Consignee, and the clarifications provided by the foregoing Chapter Note and HS EN, subject articles are properly classified under AHTN 2022 subheading 3926.90.49 by virtue of Rules 1 and 6 of the General Rules for the Interpretation (GRI) of the HS (Section 1610 of the CMTA).

WHEREFORE, premises considered, subject article is hereby classified as follows:

Products	AHTN 2022 Code	2022 MFN Rate
PS45, PS46, and PW47 Ear Muffs	3926.90.49	15% <i>ad valorem</i>

This is for compliance by the BOC pursuant to Section 1100 of the CMTA.

So Ordered.

FOR THE COMMISSION

Digitally signed


MARILOU P. MENDOZA
 Chairperson

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