CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH – COURT NO. 03

CUSTOMS Appeal No. 11958 of 2015-DB

[Arising out of Order-in-Original/Appeal No JMN-CUSTM-000-APP-062-063-15-16 dated 04.08.2015 passed by Commissioner of CUSTOMS-JAMNAGAR(PREV)]

Anand Mithalal Jain **...Appellant**

Director, Sss Sai Shipping Services Pvt Ltd.,
Office No. 107, Contrans Logistics Pvt Ltd.,
Rampara-2, Rajula, Pipavav,
Amreli,
Gujarat

VERSUS

C.C.-Jamnagar(prev) **...Respondent**

Sharda House...Bedi Bandar Road,
Opp. Panchavati,
Jamnagar,
Gujarat

WITH

CUSTOMS Appeal No. 12019 of 2015-DB

Arising out of Order-in-Original/Appeal No JMN-CUSTM-000-APP-062-063-15-16 dated 04.08.2015 passed by Commissioner of CUSTOMS-JAMNAGAR(PREV)]

Chem Plast **...Appellant**

S-59, Vivekanand Industrial Estate, Nr Rakhial Char Rasta, Rakhial-Sarangpur Road,
AHMEDABAD
GUJARAT-380021

VERSUS

C.C.-Jamnagar(prev) **...Respondent**

Sharda House...Bedi Bandar Road,
Opp. Panchavati,
Jamnagar,
Gujarat

APPEARANCE:

Shri P.D Rachchh, Shri Dhaval K Shah, Advocates appeared for the Appellant
Shri Himanshu P Shrimali, Superintendent (AR) appeared for the Respondent

CORAM: **HON'BLE MEMBER (TECHNICAL), RAJU**
HON'BLE MEMBER (JUDICIAL), SOMESH ARORA

FINAL ORDER NO. A / 11151-11152 /2023

DATE OF HEARING: 12.05.2023

DATE OF DECISION: 12.05.2023

SOMESH ARORA

We are concerned with the goods imported by the appellant M/s. Chem Plast, stated to be 'un-coated calcite powder' falling under Heading No. 25309030. Party has accordingly claimed classification and assessment. Department however has taken a view after a test through the CRCL laboratory at Kandla, that the concerned item was 'uncoated Precipitated Calcium Carbonate', and therefore was liable to be assessed under Tariff Heading No 28365000. Department had drawn the samples immediately at the time of receiving the goods on 29.11.2013 and accordingly provided test report to the party. Party sought a re-testing on 30.12.2013, within reasonable time of the communication of the test report challenging the test report on the ground that CRCL, kandla was not having the appropriate test facilities and seeking a re-test through other labs approved by the Department. The letter having gone an responded, party through another letter dated 22.05.2014 being reminder sought the re-test again. Still there was no response from the Department, the party brought eventually its own test report through Delhi Test House dated 24.12.2013, which was prior to their letter of request indicating said item was nothing but "un-coated Natural calcite powder" as stated by them. When the matter came up for adjudication before Lower Authorities, it was pointed out that the party had brought the report of Delhi Test House at the back of department and therefore same was not acceptable. However, the contention of the party that they had sought re-test of the samples as per the procedures of the custom manual was never dealt with by the Commissioner (Appeals) in the impugned order. Being aggrieved the party has filed the present appeal.

2.1 The learned Advocate for the party relied upon various case laws, including the one of this bench, which indicated that the Board Circular No. 43/2017-Cus dated 16.11.2017 allowed testing by out side laboratories which were capable of certain tests, which CRCL was not capable of and that CRCL (Kandla) as per circular at the relevant time was not having relevant test facility.

2.2. Learned Advocate also brought to our notice Circular No. 43/2017-Cus dated 16.04.2017, which indicates that in relation to "Natural calcite powder'', the CRCL Laboratories is not having the requisite facilities and therefore out side test are required to be done. The main point of contention of the advocate was when CRCL, Kandla was not having the facility and department itself permitted test from outside laboratories. The report of the department becomes unacceptable and this fact has been taken cognigence of in various case laws including in 2019 (365) ELT 130 (Tri.-All), in the matter of Commissioner of Customs & ST Noida V/s. Manikya Creations Pvt. Ltd., in which the same circular was relied upon to indicate that CRCL could not done the testing. He also relied upon various case laws including 20 Microns Ltd Vs. C.C (Import), Mumbai as reported at 2020 (372) ELT 403 (Tri.- Mum.) as well as Asian Granito India Ltd. Vs. CC, Mundra as reported at 2021 (375) ELT 597 (Tri. Ahmd.) to emphasize same type of items were correctly classified under Heading No. 25039030.

3. As against this, the Learned AR relied upon the impugned order the Commissioner(Appeals), and findings to emphasis that the test report of CRCL, substantiated that this item was different from the one claimed by the importer and therefore the order was justified as well as classification correctly considered.

4. We find from the factual matrix that at the relevant time Kandla port CRCL laboratory, was not having requisite test facility, even as per the case laws cited as well as the CBEC Circular. Further, once a report was received by the party and it sought re-test within reasonable time and simultaneously or even before the test report did test at the private lab same should have been accepted. We also find that the impugned order of the Commissioner (Appeals) gives no reasons as to why the department could not agree with the request of re-test.

5. In view of the facts, we find that the test report as submitted by the party is required to be accepted. Accordingly, we accept the same and classification as claimed by the party on that basis. The appeal is therefore allowed. The appeal filed by the CHA is also accordingly allowed.

(Dictated & Pronounced in the Open Court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

PALAK