

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

REGIONAL BENCH – COURT NO. 01

CUSTOMS Appeal No. 11562 of 2016-DB

[Arising out of Order-in-Original/Appeal No JMN-CUSTM-000-APP-033-16-17 dated 28.06.2016 passed by Commissioner of CUSTOMS-AHMEDABAD]

Meghraj Chemicals And Agencies

...Appellant

Celler-6, Mahavir Cloth Market,
D.B Road, Kankaria,
Ahmedabad,
Gujarat

VERSUS

C.C.-Jamnagar(prev)

...Respondent

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

APPEARANCE:

None for the Appellant

Shri. Sanjay Kumar, Superintendent (Authorized Representative) for the Respondent

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

FINAL ORDER NO. A / 11554 / 2023

DATE OF HEARING: 20.07.2023
DATE OF DECISION: 20.07.2023

SOMESH ARORA

When the matter was called, none appeared for the party despite notices having been given on 15.03.2023, 12.04.2023, 03.05.2023 & 13.06.2023. It was also mentioned on the last occasion that the matter is posted for hearing as a last chance. We find that no one has appeared this time also on this date. Learned AR also objects to giving more time, to appellant. It is therefore decided that the matter is to be taken up for decision on merits.

2. The issue involved in this case is regarding classification, which the party claimed was for the product "Un-Coated Calcite Powder" is under Tariff Heading No. 25309030.

3. As against this Department after test report by the chemical analysis found the product to be precipitated Calcium Carbonate. The test report which is part of the Order-In-Original is reproduced at para 4 on pg. 101, as follows:

"4. The test memo bearing No.125/15-16 dated 04.09.2015 was sent to the Chemical Examiner, Kandla and the result was received on 09.09.2015 with a finding as "The sample as received is in the form of white powder, it is composed of Precipitated Calcium Carbonate. Sealed remnant returned herewith".

3.1 The report indicates that chemical examiner has come to analysis and finding that the sample was in the form of white powder and it is composed of precipitated Calcium Carbonate. Accordingly, the Department during adjudication as well as in the course of appeal decided the classification to be under Tariff Heading No. 2836500. We also find that during the course of hearing before the original Adjudicating Authority, the importer had waived SCN and the option of personal hearing and requested to finalize bill of entry and release the goods. It had also agreed to pay the penalty as Commissioner of custom may fix to order release of the goods and also submitted that in view of their financial and commercial losses, they are seeking release of the subject goods at the earliest.

4. We have gone through the reasoning of the Learned Commissioner (Appeals), in the matter as appearing at pg. 28 para 15-20, which is reproduced below:

"15. Coming to the moot question i.e. whether the goods under refer merits classification under heading 25309030, claimed by the Appellants or as confirmed by the department under 28365000. In this regard, I find that the said Appellants have not come up with any material contradicting two substantial evidences brought on records by the department viz. (i) relevant Panchnama during which it was prima-facie appeared that the goods under reference were Calcium Carbonate and not the declared goods and (ii) the report of the Chemical Examiner who categorically opined that the goods in question are Precipitated Calcium Carbonate. It is a matter of common knowledge that the word "precipitated" preceding to Calcium Carbonate itself indicates that the goods under reference are not obtained as natural resources and thus classifiable under Chapter 25 but it is

a manufactured item, classifiable under Chapter 28. As per Wikipedia ([https://en.wikipedia.org/wiki/Calcium carbonate](https://en.wikipedia.org/wiki/Calcium_carbonate)). Water is added to give calcium hydroxide then carbon dioxide is passed through this solution to precipitate the desired calcium Carbonate, referred to in the industry as precipitated calcium carbonate (PCC). The claim made by the said Appellants, viz. parameters of the goods imported and the alleged classification, the goods imported are Calcite powder made from Natural Calcite Lumps (by) simply grinding in the crushing mill without subjecting to any process like Calcinations or Roasting Crystallization: even if considered on its face value, does not contradict above said evidences especially the report of the Chemical Examiner at Kandla. Had the goods been what it has been claimed to be, the test report would not declare it to be "Precipitated" Calcium Carbonate. It is not disputed that the chemical composition of both the items is same. Thus, this argument does not in any manner favour their case. Also, I find that the department has relieved by placing on record two main evidences viz. (i) relevant examination report of the goods, duly recorded in the presence of independent Panchas as well as in the presence of authorised representative of M/s. Divine Shipping P. Ltd., who are the authorized Custom Broker Agent of the said Appellants and (ii) relevant test report received from the Chemical Examiner, Kandla. Thus, I find that it is no a where department can be held guilty of not having discharged burden of proof. When the department has come up with more than one substantial as well as credential and reliably evidence in the form of Panchnama and independent Chemical Examiner's report, the onus shifts on the said Appellants to prove their case and bald statement cannot come to their rescue. In thos regard, I find that Hon'ble High Court of Himachal Pradesh, in the case of Commissioner of Central Excise. Vis. International Cylinders Pvt. Ltd. [2010 (255) E.L.T. 68 (H.P.)] have held that Burden shifts to manufacturer once Department proves something illegal being undertaken.

16. Another argument repeatedly made by the said Appellants in this regard is that their request for re-test was declined and the authority's action of not sending goods (i.e, sample) to re-testing has created entire controversy. In this regard, it is needless to mention here that findings given above while answering question about violation of natural justice very well hold good here too. To question the classification arrived at by lower adjudicating authority. Evidences contradicting the test report of the Chemical Examiner are required and the same has not been produced by the said Appellants.

17. Interestingly, entire arguments made are made considering that a fruitful outcome would be available them. The contents of Para (viii) exemplify as to how insignificant it is to send the sample for re-test though no such request was made for such re-test, as it transpires from the records of the case. At said Para. (viii) it is mentioned that if they were given a copy of test report and given some breathing time to think on re-testing of the samples. then they could have got the opportunity to lead some evidence and could have established that the test result the Customs

Laboratory is not in consonance with the IS standard and they could have established their case by cross-examining the chemical examiner. Such a line of argument arrears to be ridiculing the appeal and defense mechanism available to litigants. Further, in absence of any specific ground for rejecting the report of the Chemical Examiner at Kandla. it has been claimed that the impugned order is required to be quashed on this count and matter is required to be remanded with a clear direction to send the samples for re-test either to CRCI Delhi or any other laboratory. Such baseless and frivolous arguments. especially made without any basis do not call for any attention for a finding at this level. Accordingly, I find that the said Appellants have not brought on record any worthy argument calling for consideration to alter the conclusion drawn by the lower adjudicating in classifying the goods under reference under CTH 28309030.

18. In so far as valuation of the goods is concerned, it is argued that value is enhanced without any evidence of contemporaneous imports available at relevant time with the son quantity etc. parameters and in absence of it, valuation declared cannot be discarded. to the relevant Para (ix) in this regards, it is also mentioned that "since the same mistake husb committed by the Appellate Commissioner, in the present case, impugned order is required to be quashed." Further, it is also mentioned that "....though this is a settled legal position and this Hon'ble Bench has already taken this view in the case of Pushpak [2014(312) ELT XI (Tri.)], the Appellate Commissioner has upheld the order of enhancement of the valde which is contrary...." In the instant case, the said appellants declared a specific value for the goods, which were claimed to be Uncoated Calcite Powder and falling under CTH 2530-9030 The value thereof was considered to be in terms of guidelines issued by the Directorate Valuation, which are not disputed in a routine manner. When the classification was found to be altogether in the above discussed facts and circumstances of the case, it is obvious that the earli valuation would not hold. Subsequent valuation done, in lines of the same guidelines, cann disputed in a routine manner and especially in the manner as it has been done in the instant case Therefore. I find that impugned order, in so far it determines afresh the value of the goods umfer import is concerned, does not call for any interference.

19. In so far as the penalty imposed is concerned, the said Appellants intend to rely on the judgment of the Apex court in the case of M/s. Hindustan Steel Limited [1978 ELT (159) whereby it has been held that penalty should not be imposed merely because it was lawful to do so. However, I find that it has also been mentioned in the said case law that where it was proved that the assessee was guilty to conduct contumacious or dishonest and the error committed by th assessee was not bonafide but was with a knowledge that the assessee was required to act otherwise, penalty might be imposed. The peculiar facts of the instant case are that preliminary examination of the goods distinctly and clearly indicates mis-declaration, subsequent chemical test conducted by the independent agency i.e. the Chemical Examiner

at Kandia, reveals to confirm that the goods under reference are quite distinct to what has been declared. When faced with such facts and circumstances, it is argued that they declared so since the documents of the Supplier indicated so. At the same time, it is also argued that supplier does not have any facility to manufacture but exclusion is made to the grinding process since it was beneficial to them. On one hand they have claimed to be novice whereas it is a fact on record that they are duly registered with different tax authorities and therefore responsible enough of compliance. At a point of time, said Appellants have come up with substantial and credible argument and to show that they did not have any malafide to wrongly avail the benefits of the Notification No. 46 2011- Cus. dated 01-06-2011 and have instead chosen to make bald statements and surmises against quasi-judicial authority.

20. In so far as order for payment of Interest under Section 28AA of the said Act is concerned, the only argument made is that there is no short levy or short payment of duty and therefore proposal in this regard does not hold water. The factum of payment of differential duty to the tune of Rs. 3,87,903/- by the said Appellants on 06-11-2015 is found to be contrary to the above argument that there is no short payment. Therefore, I find that the order with regard to recovery of Interest under Section 28AA of the said Act is found to be proper and legal."

5. We find that the order is well reasoned and is properly backed by opinion of chemical analyst. We therefore find no merits in the grounds taken by the appellant and find that the impugned order is sustainable.

6. The appeal is therefore dismissed.

(Dictated & Pronounced in the open Court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)