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

REGIONAL BENCH – COURT NO. 01

CUSTOMS Appeal No. 11734 of 2017-DB

CUSTOMS Miscellaneous (ORS) Application No. 10256 of 2023

[Arising out of Order-in-Original/Appeal No JMN-CUSTM-000-APP-020-021-17-18 dated 03.07.2017 passed by Commissioner of CUSTOMS-AHMEDABAD]

ORIENT CERATECH LIMITED **...Appellant**
Gidc Estate, Porbandar
Porbandar
Gujarat-360577

VERSUS

C.C.-Jamnagar(prev) **...Respondent**
Sharda House...Bedi Bandar Road,
Opp. Panchavati,
Jamnagar,
Gujarat

WITH

CUSTOMS Appeal No. 11735 of 2017-DB

CUSTOMS Miscellaneous (ORS) Application No. 10257 of 2023

[Arising out of Order-in-Original/Appeal No JMN-CUSTM-000-APP-020-021-17-18 dated 03.07.2017 passed by Commissioner of CUSTOMS-AHMEDABAD]

ORIENT CERATECH LIMITED **...Appellant**
Gidc Estate, Porbandar
Porbandar
Gujarat-360577

VERSUS

C.C.-Jamnagar(prev) **...Respondent**
Sharda House...Bedi Bandar Road,
Opp. Panchavati,
Jamnagar,
Gujarat

APPEARANCE:
Shri R. Subramanya, Advocate appeared for the Appellant
Shri A.R Kanani, Superintendent (Authorized Representative) for the Respondent

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

FINAL ORDER NO. A/ 11712-11713 /2023

DATE OF HEARING:16.08.2023
DATE OF DECISION: 16.08.2023

SOMESH ARORA

As regard the Miscellaneous application for change of name, the application is allowed on the basis of certificate of registrar of company.

Accordingly, the Company's name stands changed from "ORIENT ABRASIVES LIMITED to ORIENT CERATECH LIMITED".

2. In the instant case, the appellants have approached this Court against the order of final assessment against the provisional assessment, which was resorted to for the following reasons as can be seen from para 3 at running pg. 30 of appeal memo. Para 3 is reproduced below:

> *"3. Due to non production of NOC from Geology & Mining Department and for want of Chemical Test Result from Customs Laboratory Kandla, the said S/B were provisionally assessed thereafter countersigned by the AC on 10.09.2015 and 14.09.2015 respectively. The representative sample was drawn by the proper officer for S.B No. 38/10.09.2015 and sent to Custom House Laboratory, Kandla for test results."*

2.1 However, while finalizing assessment as per the order-in-original at running pg. 35 operative portion is reproduced below:

> *" I hereby order to finalize the S/B No. F-38 dtd. 10.09.2015 and S/B No. F-39 dtd.. 14.09.2015 by allowing the deduction of moisture contents @ 8.35% on the basis of Pre-Shipment test by in- house ISO approved laboratory based on which the Declaration of Moisture is made by the said Exporter and the proforma Invoice is raised."*

2.2 It can be seen that the assessment has been finalized of the Shipping Bill No. F 38 dated 10.09.2015, and Shipping Bill No. F. 39 dated 14.09.2015, by deducting upon the moisture contents @ 8.35% on the basis of pre-shipment test by ISO Lab. The initial issue on the basis of which provisional assessment was done which has been altogether ignored in the order of the adjudicating authority and the same has been confirmed in order-in-appeal bearing No.JMN-CUSTM-000-APP-020 to 021-17-18 Dated 03.07.2017, again on the basis of moisture contents difference at the port of exportation and place of importation.

2.3 From the foregoing, it is clear that the issue which was the basis of the provisional assessment has been ignored altogether and a fresh issue has been framed by the department and has been conveniently decided ignoring the NOC which was required for re-export.

3. We, therefore, find that at this stage when against the order of final assessment department is not even in appeal, there is no reason for us to sustain the order of the lower authorities. The order of finalization of assessment is set aside, appeal is allowed by setting aside the impugned order. We are not however commenting about the original provisional assessment, as the status is not known to us, nor is appeal made against such assessment. Appeals are allowed.

(Dictated & Pronounced in the open Court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

PALAK