Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 3

CUSTOMS Appeal No. 10589 of 2023- DB

(Arising out of OIA-AHM-CUSTM-000-COM-06-07-23-24 dated 21/06/2023 passed by Commissioner of Customs, Ahmedabad)

MUDRIKA CERAMICS I LTD ....**Appellant**
461 GIDC POR NH No.8
Vadodara, Gujarat-391243

VERSUS

COMMISSIONER OF CUSTOMS - AHMEDABAD ....**Respondent**
1st Floor, Customs House, Opposite Old High Court,
Navrangpura, Ahmedabad, Gujarat-38009

WITH

- **(i) CUSTOMS Appeal No. 10590 of 2023- DB (SHASTA FREIGHT SERVICES PVT LTD)**
- **(ii) CUSTOMS Appeal No. 10591 of 2023- DB (SHRI ATUL KUMAR MITTAL)**
- **(iii) CUSTOMS Appeal No. 10592 of 2023- DB (SHRI ANUJ KUMAR MITTAL)**
- **(iv) CUSTOMS Appeal No. 10593 of 2023- DB (NEXUS LOGISTICS)**
- **(v) CUSTOMS Appeal No. 10594 of 2023- DB (SHRI HIRANMAY JOSHI)**
- **(vi) CUSTOMS Appeal No. 10595 of 2023- DB (SHRI HITESH A PATNI)**
- **(vii) CUSTOMS Appeal No. 10642 of 2023- DB (VIKAS AGARWAL)**
- **(viii) CUSTOMS Appeal No. 10643 of 2023- DB (SHRI DHARM CHAND)**
- **(ix) CUSTOMS Appeal No. 10652 of 2023- DB (Global Ceramics Materials Limited)**
- **(x) CUSTOMS Appeal No. 10653 of 2023- DB (Mr.David Slinn)**

APPEARANCE:
Shri T Vishwanathan, Ms. Shruti Khanna & Shri Saurabh Dixit, Advocate for the Appellant
Shri Tara Praksah, Deputy Commissioner (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No.10235-10245/2024

DATE OF HEARING: 08.12.2023
DATE OF DECISION: 24.01.2024

RAMESH NAIR

These appeals are filed by M/s Mudrika Ceramics (I) Limited against change of classification of goods imported by the Appellant and confiscation and imposition of penalties. Appeal has also been filed by M/s. Shasta Freight Services Pvt. Ltd, Shri Atul Kumar Mittal, Shri Anuj Kumar Mittal, M/s. Nexus Logistics, Shri Hiranmay Joshi, Shri Hitesh Patni, Shri Vikas Agarwal, Shri Dharan Chand and M/s. Global Ceramics against imposition of redemption fine and penalties under Section 112(a), 112(b), 114A, 114 AA, and 117 of the Customs Act.

1.1 The basic issue involved in the present appeal is whether "Apatite (Ground) Calcium Phosphate / Natural Calcium Phosphate" imported by the Appellant is correctly classifiable under CTH 25102030 as claimed by them or is to be classified under CTH 28352690 as confirmed vide the impugned order. The consequent differential import duties and penalties are imposed against the Appellant Company vide the impugned, apart from imposing various personal penalties on other co-Appellants.

2. Shri. Saurabh Dixit, Learned Counsel appearing on behalf of the Appellant Company and other Noticees, at the outset, submitted that the very same nature of goods imported from the same supplier earlier, were also the subject matter of classification dispute and vide OIA dt.5.9.11, the goods in question were held to be classifiable under CTH 2510 2030. The said OIA dt.5.9.11 was accepted by Customs department and no appeal was filed there against. He submitted that the sample drawn from factory premises after its clearance from Port of import, is improper and the test report of such samples cannot be relied upon as valid evidence.

2.1 He further submitted that the overseas supplier, viz. M/s. Global Ceramics had mistakenly mentioned Chapter 28 in their commercial document/BL instead of Chapter 25, and such mistake was later on corrected by them. In fact, they sought Tariff Ruling from UK wherein the said product was stated to be classifiable under CTH 2510 and not Chapter 28.

2.2 He also submitted that in the present case, re-test was conducted after original test report suggested that the product was synthetic in nature and the said re-test report dt.22.11.22 clearly states that the product is "natural" and hence, it can never be classified under Chapter 28 dealing with chemicals. It is his submission that the cross-examination of Shri. V. Suresh, JT Director(NFSG), CRCL, New Delhi conclusively proves that the goods are classifiable under CTH 25 and not 28.

2.3 He relied upon the HSN Explanatory Notes as well as Chapter Notes to Chapter 25 and 28, to submit that the imported goods in question were rightly classifiable only under CTH 2510 and not under Chapter 2835 of the CTA, 1985.

2.4 He further submitted that the identical goods imported before as well as after the material period have been successfully classified under CTH 2510 only without any dispute by the revenue department. So much so, all subsequent consignments were subjected to provisional assessment, wherein test reports and re-test reports were obtained which are ad-verbatim identical to the retest report in the present case, and all assessments have been successfully classified under CTH 2510 by Customs authorities and such assessment too has been accepted by Customs department.

2.5 It is his submission that the goods were merely heat treated to remove impurities and there was no thermal decomposition which would qualify as calcination. Mere heating a product even if assumed to calcination process, does not mean that product is per se calcined, in the state in which it was imported and hence, the classification under CTH 2510 was in order.

2.6 It is his submission that the communication exchanged between the importers, CHA and/or the overseas supplier, was only aimed at keeping the correct description of the product in the documents, to avoid any confusion and have clarified at the time of imports for Customs assessment purpose. Also, it is their case that such communication exchanged after the disputed imports, in no way have any bearing on classification of goods imported prior thereto.

3. Shri. T. Vishwanathan, Learned Counsel, appearing on behalf of M/s. Global Ceramics, submitted that the onus to classify goods is upon importer, and that the description and details were properly mentioned by the supplier on their documents and records. He also submitted that no penalty is called for against the overseas supplier in the given set of facts and circumstances.

4. Shri Tara Praksah, Learned Deputy Commissioner (AR) on the other hand reiterated the findings of the impugned order. He also submitted that the product literature shows that some process was being undertaken on the mineral product and hence, it was calcined and as such out of the purview of classification under CTH 2510.

5. We have carefully considered the submissions made by both the sides and perused the records. We find that in the present case, the issue to be decided is whether the imported goods are Natural Calcium Phosphate and are classifiable under CTH 2510 or under CTH 2835 and whether any consequent duty, interest and penal liabilities follow or otherwise.

5.1 Before proceeding further, we find that the contents of Chapter Note 1 to Chapter 25 as well as HSN Explanatory Notes to Chapter 25, 28 and 31 are required to be appreciated in this regard, which are reproduced below:

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Chapter 31

Fertilisers

Notes.

1.- This Chapter does not cover :

(a) Animal blood of heading 05.11;

(b) Separate chemically defined compounds (other than those answering to the descriptions in Note 2 (a), 3 (a), 4 (a) or 5 below); or

(c) Cultured potassium chloride crystals (other than optical elements) weighing not less than 2.5 g each, of heading 38.24; optical elements of potassium chloride (heading 90.01).

2.- Heading 31.02 applies only to the following goods, provided that they are not put up in the forms or packages described in heading 31.05 :

Goods which answer to one or other of the descriptions given below :

(i) Sodium nitrate, whether or not pure;

(ii) Ammonium nitrate, whether or not pure;

(iii) Double salts, whether or not pure, of ammonium sulphate and ammonium nitrate;

(iv) Ammonium sulphate, whether or not pure;

(v) Double salts (whether or not pure) or mixtures of calcium nitrate and ammonium nitrate;

(vi) Double salts (whether or not pure) or mixtures of calcium nitrate and magnesium nitrate;

(vii) Calcium cyanamide, whether or not pure or treated with oil;

(viii) Urea, whether or not pure.

(b) Fertilisers consisting of any of the goods described in (a) above mixed together.

(c) Fertilisers consisting of ammonium chloride or of any of the goods described in (a) or (b) above mixed with chalk, gypsum or other inorganic non-fertilising substances.

(d) Liquid fertilisers consisting of the goods of subparagraph (a) (ii) or (viii) above, or of mixtures of those goods, in an aqueous or ammoniacal solution.

3.- Heading 31.03 applies only to the following goods, provided that they are not put up in the forms or packages described in heading 31.05 :

(a) Goods which answer to one or other of the descriptions given below :

(i) Basic slag;

(ii) Natural phosphates of heading 25.10, calcined or further heat-treated than for the removal of impurities;

(iii) Superphosphates (single, double or triple);

(iv) Calcium hydrogenorthophosphate containing not less than 0.2 % by weight of fluorine calculated on the dry anhydrous product.

Chapter 25

Salt; sulphur; earths and stone; plastering materials, lime and cement

Notes.

1.- Except where their context or Note 4 to this Chapter otherwise requires, the headings of this Chapter cover only products which are in the crude state or which have been washed (even with chemical substances eliminating the impurities without changing the structure of the product), crushed, ground, powdered, levigated, sifted, screened, concentrated by flotation, magnetic separation or other mechanical or physical processes (except crystallisation), but not products which have been roasted, calcined, obtained by mixing or subjected to processing beyond that mentioned in each heading.

The products of this Chapter may contain an added anti-dusting agent, provided that such addition does not render the product particularly suitable for specific use rather than for general use.

2.- This Chapter does not cover :

(a) Sublimed sulphur, precipitated sulphur or colloidal sulphur (heading 28.02);

(b) Earth colours containing 70 % or more by weight of combined iron evaluated as Fe_2O_3 (heading 28.21);

(c) Medicaments or other products of Chapter 30;

(d) Perfumery, cosmetic or toilet preparations (Chapter 33);

(e) Setts, curbstones or flagstones (heading 68.01); mosaic cubes or the like (heading 68.02); roofing, facing or damp course slates (heading 68.03);

(f) Precious or semi-precious stones (heading 71.02 or 71.03);

(g) Cultured crystals (other than optical elements) weighing not less than 2.5 g each, of sodium chloride or of magnesium oxide, of heading 38.24; optical elements of sodium chloride or of magnesium oxide (heading 90.01);

(h) Billiard chalks (heading 95.04); or

(ij) Writing or drawing chalks or tailors' chalks (heading 96.09).

3.- Any products classifiable in heading 25.17 and any other heading of the Chapter are to be classified in heading 25.17.

4.- Heading 25.30 applies, *inter alia*, to : vermiculite, perlite and chlorites, unexpanded; earth colours, whether or not calcined or mixed together; natural micaceous iron oxides; meerschaum (whether or not in polished pieces); amber; agglomerated meerschaum and agglomerated amber, in plates, rods, sticks or similar forms, not worked after moulding; jet; strontianite (whether or not calcined), other than strontium oxide; broken pieces of pottery, brick or concrete.

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GENERAL

As provided in Note 1, this Chapter covers, except where the context otherwise requires, mineral products **only** in the crude state or washed (including washing with chemical substances to eliminate impurities provided that the structure of the product itself is not changed), crushed, ground, powdered, levigated, sifted, screened or concentrated by flotation, magnetic separation or other mechanical or physical processes (not including crystallisation). The products of this Chapter may also be heated to remove moisture or impurities or for other purposes, provided that the heat treatment does not modify their chemical or crystalline structures. However, other heat treatments (e.g., roasting, fusion or calcination) are not allowed, unless specifically permitted by the heading text. Thus, for example, heat treatment which could entail a change in chemical or crystalline structure is allowed for products of headings 25.13 and 25.17, because the texts of these headings explicitly refer to heat treatment.

The products of this Chapter may contain an added anti-dusting agent, provided that such addition does not render the product particularly suitable for specific use rather than for general use. Minerals which have been **otherwise** processed (e.g., purified by re-crystallisation, obtained by mixing minerals falling in the same or different headings of this Chapter, made up into articles by shaping, carving, etc.) **generally fall in later Chapters** (for example, **Chapter 28** or **68**).

In certain cases, however, the headings :

(1) Refer to goods which by their nature must have been subjected to a process not provided for by Note 1 to this Chapter. Examples include pure sodium chloride (heading 25.01), certain forms of refined sulphur (heading 25.03), chamotte earth (heading 25.08), plasters (heading 25.20), quicklime (heading 25.22) and hydraulic cements (heading 25.23).

(2) Specify conditions or processes which are admissible in those cases in addition to those allowed generally under Note 1 to this Chapter. For example, witherite (heading 25.11), siliceous fossil meals and similar siliceous earths (heading 25.12) and dolomite (heading 25.18) may be calcined; magnesite and magnesia (heading 25.19) may be fused or calcined (dead-burned (sintered) or caustic-burned). In the case of dead-burned (sintered) magnesia, other oxides (e.g., iron oxide, chromium oxide) may have been added to facilitate sintering. Similarly the materials of headings 25.06, 25.14, 25.15, 25.16, 25.18 and 25.26 may be roughly trimmed or merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape.

When products are classifiable in heading 25.17 and any other heading of this Chapter, they are to be classified in heading 25.17.

The Chapter **excludes** precious or semi-precious stones of **Chapter 71**.

25.10

25.10 - Natural calcium phosphates, natural aluminium calcium phosphates and phosphatic chalk.

2510.10 - Unground

2510.20 - Ground

This heading covers **only** apatite and other natural calcium phosphates (tricalcium phosphates or phosphorites), natural aluminium calcium phosphates and phosphatic chalks (chalk naturally mixed with calcium phosphate).

These products remain in this heading even when ground for use as fertilisers or if they have been heat treated merely to remove impurities. But the heading **does not include** the products when they are calcined or further heat treated than for the removal of impurities (**heading 31.03** or **31.05**).

28.35

28.35 - **Phosphinates (hypophosphites), phosphonates (phosphites) and phosphates; polyphosphates, whether or not chemically defined.**

2835.10 - Phosphinates (hypophosphites) and phosphonates (phosphites)

- Phosphates :

2835.22 - - Of mono- or disodium

2835.24 - - Of potassium

2835.25 - - Calcium hydrogenorthophosphate ("dicalcium phosphate")

2835.26 - - Other phosphates of calcium

2835.29 - - Other

- Polyphosphates :

2835.31 - - Sodium triphosphate (sodium tripolyphosphate)

2835.39 - - Other

(A) PHOSPHINATES (HYPOPHOSPHITES)

Subject to the **exclusions** mentioned in the introduction to this sub-Chapter, this heading includes phosphinates (hypophosphites), metal salts of phosphinic (hypophosphorous) acid (H_3PO_2) (heading 28.11).

These are soluble in water and decompose on heating with evolution of hydrogen phosphide which ignites spontaneously. Alkali phosphinates are reducing agents.

The most important are :

(I) **Sodium phosphinate (hypophosphite)** ($NaPH_2O_2$), in white tablets or crystalline powder, hygroscopic.

(II) **Calcium phosphinate (hypophosphite)** ($Ca(PH_2O_2)_2$), colourless crystals or a white powder (obtained by the action of white phosphorus on boiling milk of lime).

Both these products are used in medicine as tonics or restoratives.

(III) **Ammonium, iron or lead phosphinates (hypophosphites).**

(B) PHOSPHONATES (PHOSPHITES)

Subject to the **exclusions** mentioned in the introduction to this sub-Chapter, this heading includes phosphonates (phosphites), metal salts (neutral or acid) of phosphonic (phosphorous) acid (H_3PO_3) (heading 28.11).

The most important phosphonates are those of ammonium, sodium, potassium or calcium, soluble in water and acting as reducing agents.

28.35

(c) **Trisodium orthophosphate** (tribasic phosphate) ($Na_3PO_4.12H_2O$). Colourless crystals, soluble in water, releasing part of their water of crystallisation on warming. Used as a flux for dissolving metal oxides, in photography, as a detergent, for softening industrial water and descaling boilers, to clarify sugar and spirits, in tanning, in medicine, etc.

(d) **Sodium pyrophosphates** (sodium diphosphates). Tetrasodium pyrophosphate (neutral diphosphate) ($Na_4P_2O_7$). Non-hygroscopic white powder, soluble in water. Used in laundering, in the preparation of detergents, of mixtures to prevent the coagulation of blood, of refrigerating products and of disinfectants, in cheese manufacture, etc.

Disodium dihydrogenpyrophosphate (acid diphosphate) ($Na_2H_2P_2O_7$), which has the same appearance, is used as a flux in enamelling, for precipitating the casein from milk, and in the preparation of baking powder, of certain malted milk powders, etc.

(e) **Sodium triphosphate** ($Na_5P_3O_{10}$) (pentasodium triphosphate also known as sodium tripolyphosphate). White crystalline powder; used as a water-softener, as an emulsifier or to preserve foodstuffs.

(f) **Sodium metaphosphates** (basic formula $(NaPO_3)_n$). Two metaphosphates meeting this description are sodium cyclo-triphosphate and sodium cyclo-tetraphosphate.

(g) **Sodium polyphosphates** having a high degree of polymerisation. Some sodium polyphosphates are incorrectly called sodium metaphosphates. There are several linear sodium polyphosphates having a high degree of polymerisation ranging from a few dozen to a few hundred units. Although they generally occur as polymers having an unspecified degree of polymerisation, they remain in this heading.

These include :

The product incorrectly known as sodium hexametaphosphate (a polymeric mixture of formula ($(NaPO_3)_n$), also known as Graham's salt. Vitreous substance or white powder, soluble in water. In aqueous solution, this product sequesters the calcium and the magnesium contained in the water, hence its use as a water-softener. Also used in the preparation of detergents and casein glues, to emulsify essential oils, in photography, in the manufacture of processed cheese, etc.

(3) **Potassium phosphates**. The best known is potassium dihydrogenorthophosphate (monopotassium phosphate) (KH_2PO_4). Obtained by treating phosphated chalk with orthophosphoric acid and potassium sulphate. Colourless crystals, soluble in water. Used as a yeast nutrient and as a fertiliser.

(4) **Calcium phosphates**.

(a) **Calcium hydrogenorthophosphate** ("dicalcium phosphate") ($CaHPO_4.2H_2O$). Obtained by the action of an acidulated calcium chloride solution on disodium hydrogenorthophosphate. White powder, insoluble in water. Used as a fertiliser, as a mineral supplement to animal fodder, and in the manufacture of glass, medicaments, etc.

Calcium hydrogenorthophosphate containing not less than 0.2 % by weight of fluorine calculated on the dry anhydrous product is **excluded (heading 31.03** or **31.05**).

28.35

(b) **Calcium tetrahydrogenbis (orthophosphate)** (monocalcium phosphate) ($CaH_4(PO_4)_2$. 1 or 2 H_2O). Obtained by treating bones with sulphuric acid or hydrogen chloride. Occurs in thick solutions; releases its water of crystallisation under the action of heat. It is the only calcium phosphate soluble in water. Used in the preparation of baking powders, as a medicament, etc.

(c) **Tricalcium bis(orthophosphate)** (neutral calcium phosphate) ($Ca_3(PO_4)_2$). The heading covers precipitated calcium phosphate (i.e., ordinary calcium phosphate). Obtained by treating the tricalcium phosphate contained in bones, first with hydrochloric acid and then with sodium hydroxide, or by precipitating a solution of trisodium orthophosphate by means of calcium chloride in presence of ammonia. Amorphous white powder, odourless and insoluble in water. Used as a mordant in dyeing; to clarify syrups; for pickling metals; in the manufacture of glass or pottery; in the preparation of phosphorus and medicaments (e.g., lactophosphates, glycerophosphates), etc.

Natural calcium phosphate is **excluded (heading 25.10)**.

(5) **Aluminium phosphate**. Artificial aluminium orthophosphate ($AlPO_4$), prepared from trisodium orthophosphate and aluminium sulphate, occurs as a white, greyish or pinkish powder. Used as a flux in ceramics, for sizing silk (with tin oxide), and in the preparation of dental cements.

Natural aluminium phosphate (wavellite) is **excluded (heading 25.30)**.

(6) **Manganese phosphate** ($Mn_3(PO_4)_2.7H_2O$). Obtained from manganous chloride and phosphoric acid. It is a purple powder which, alone or mixed with other products, constitutes Nuremberg violet, used by artists and in enamels. Associated with ammonium phosphate, it forms Burgundy violet.

(7) **Cobalt phosphates**. Tricobalt bis (orthophosphateor) ($Co_3(PO_4)_2$.2 or 8 H_2O) is prepared from sodium orthophosphate and cobalt acetate. Amorphous pink powder, insoluble in water. When heated with aluminium oxide, gives Thenard's blue used in enamels. Associated with aluminium phosphate, it is used in the preparation of cobalt purple.

(8) **Other phosphates**. These include phosphates of barium (opacifier), chromium (ceramic colours), zinc (ceramic colours, dental cements, fermentation control, medicine), iron (medicine) and copper (ceramic colours).

The heading also **excludes** certain phosphates, viz. :

(a) Natural calcium phosphates, apatite and natural aluminium calcium phosphates (**heading 25.10**).

(b) Other natural mineral phosphates of **Chapter 25** or **26**.

(c) Ammonium dihydrogenorthophosphate (monoammonium phosphate) and diammonium hydrogenorthophosphate (diammonium phosphate), whether or not pure (**heading 31.05**).

(d) Precious and semi-precious stones (**heading 71.03** or **71.05**).

5.2 While the Appellants have raised various lengthy averments, at the outset, we find that the very same product was the subject matter of classification dispute in the past, wherein vide OIA dt.5.9.11, it was held as follows:

or subjected to processing beyond that mentioned in each headir, are not covered under chapter 25".

4. As per chapter note 3(a) (ii) to chapter 31 ibid," Heading 3103 applies only to following goods-------

 (ii) natural phosphate of heading 2510, calcined or further heat-treated than for the removal of impurities.

A.C., Vadodara further submitted that the process of production given by the supplier clearly shows that the goods have been manufactured in a kiln and calcined even if the process of calcinations has not been taken to the stage/temperature of calcinations (as claimed by the Importer), it certainly is beyond the stage of removal of impurities and accordingly will qualify to be classified under CTH3103 in the light of chapter note 3(a) (ii) of chapter 31. Besides as per sub rule 3(c) of the General Rules for the Interpretation of Import Tariff, 'when goods cannot be classified by reference to (a) or (b) - they shall be classified under the heading which occurred last in numerical order among those which equally merit consideration. Therefore, th imported goods have been classified under CTH 31039000.

7. I have carefully examined the records produced before me and the submissions of the importer. The goods under import have been declared as 'Apatite (Ground) Calcium Phosphate' seeking classification under CTH 2510 2030 of the First Schedule to the Customs Tariff Act, 1975. There is no doubt that the test report of Central Excise and Customs Laboratory, Vadodara has mentioned, in no uncertain terms that the sample tested by them in respect of the impugned bill of entry are 'calcined' calcium triphosphate, and have also categorically mentioned that these goods or other than goods falling under CTSH 283526. The reason why this specific heading is mentioned, it appears to me, is that earlier in 2009 the same goods were classified under CTSH 28352690. This classification has been ruled out, though without assigning any reason. In fact, it is settled law that Chemical Examiner is not required to comment on coverage or otherwise, of any tested sample under any Chapter Heading, or in other words, the Chemical Examiner has to give the findings of the test in respect of chemical and physical properties of sample and composition and not the classification of a product. In the case of Shalimar Paints Ltd. v/s Commissioner of Central Excise, Calcutta 2001 (134) E.L.T. 285 (Tri. – Kolkata) it is held by the Hon'ble

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Tribunal that the Chemical examiner has jurisdiction only to give composition of goods and not to comment on classification of goods. In case of Vipin Enterprises V/s Commissioner of Customs, Mumbai, 2006 (202) E.L.T. 483-(Tri. - Del.). the Hon'ble CESTAT has held that classification is entirely outside the Chemical Examiner's concern or area of expertise and that the Examiner, instead of placing any useful material about the grades of metal, chose to make incorrect and tangential observations based on HSN notes taking the case to unnecessary controversies. In the present case, I have found that the Chemical Examiner has gone beyond his mandate. The test reports, all of which are identically worded, simply describe the product and there is no mention, whatsoever, of the chemical composition of the sample tested. The appellant has, however, produced the 'product information sheet' of the supplier M/s Global Ceramic Materials Ltd, U.K. dated 23.11.2010, which provides complete composition of the product called 'Apatite (Ground) Calcium Phosphate' and the processes which the 'raw phosphate' undergoes. It involves visual inspection and magnetic separation to remove magnetic and other contaminants. It is mentioned: "The phosphate is then fired in rotary kiln to remove moisture and other gases, producing phosphates of calcium powder". There is no mention that heating is done till the stage of calcination. The product is stated to be used in the production of High Quality Fine China. The composition of the goods is as follows:

Composition	% age	Composition	% age
Silica(SiO2)	0.02	Potash	0.06
Titania(TiO2	0.01	Soda (Na2O)	0.84
Alumina (AlO3)	0.04	Phosphorus Pentoxide (P2O5)	41.68
Ferric Oxide (Fe2 O3)	0.01	Zinc Oxide (ZnO)	0.03
Lime (CaO)	54.16	Barium Oxide (BaO)	0.01
Magnesia (MgO)	1.20	Strontia (SrO)	0.03
Specific gravity	3.11	Loss on Ignition at 1200 0 C	0.91

I have also gone through the letter of the supplier dated 1.5.2010, extracts of which is re-produced below:

APATITE (GROUND) CALCIUM PHOSTATE:

"As a naturally occurring mineral Apatite (Ground) Calcium phosphate should be classified under chapter 25. Calcination of this material takes place at temperature above 1220 deg cent. The process of Calcination-it is heating of substance of to a high temperature but below its melting point. This material have been only heated or roasted to remove the impurities and moisture content. If this material is calcined, its crystalline structure changes and material becomes milky white. Calcined products cannot be used in the manufacture of Fine Bone China since it would not have any plasticity to bind together all the raw material."

I have examined the CTSH 3103 and the associated Chapter Note 3 (a)(ii) to Chapter 31. It specifically mentions: Heading 3103 applies to goods ***"natural phosphates of heading 2510, calcined or further heat treated than for removal of impurities."*** This also means that the process of calcination/heat treatment is possible, but ONLY up to the stage of removal of impurities. In other words, if there is a complete calcination, the goods will fall under CTSH 3103 and if it is only up to removal of impurities, it will continue to fall under CTSH 2510. For clarity, I also refer to the Chapter Note 1 of Chapter 25, which reads as under:

"Except where their context or Note 4 to this chapter otherwise requires, the heading of this chapter cover only products which are in crude state or which has been washed (even with chemical substances eliminating the impurities without changing the structure of the product), crushed, ground, powdered levigated sifted screened, concentrated by flotation, magnetic separation or other mechanical or physical process(except crystallization), but not products which have been roasted, calcined, obtained by mixing or subject to processing beyond that mentioned in each heading."

6.2. Interestingly, I have found that calcination, in strict technical sense means thermal treatment process applied to ores/solid minerals in order to bring thermal decomposition, phase transition or removal of volatile fraction. It normally takes place at the temperature below melting point of a mineral product. It is a process, different than drying and roasting. However, in the Chapter Note 3(a) (ii), the expression used is "***calcined or further he treated than for removal of impurities***". The expression 'further heat treated' is broader than the word 'calcined', and once these are used with expression "or", they appear to be on par, and thus used in not so strict sense. So, any calcium phosphate, if further heat treated, shall fall under CTSH 3103, but it shall fall under CTSH 2510 if the heat treatment is merely for removal of impurities. It also implies that if any calcium phosphate, if further calcined, shall fall under CTSH 3103, but it shall fall under CTSH 2510 if the **calcination process** is merely for removal of impurities. From the Test reports of the Chemical Examiner, Vadodara, it appears that the expression 'calcined' has been used in the later sense, when looked into in conjunction with the

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'product information sheet' of the supplier M/s Global Ceramic Materials Ltd, U.K. dated 23.11.2010. The web-page of the supplier also mentions, by description, that the goods in question are usable in making fine bone china. It is a settled law that product literature is an important evidence to determine classification or nature of a product. Thus, the expression 'calcined' used by the Chemical Examiner, without amplification that the goods are 'thermally decomposed' or were calcined beyond removal of impurities , should be restricted to mean that these have been given heat treatment, but only for removal of impurities. Thus, it would be inappropriate to jump to conclusion without understanding the scope of the expression 'calcined' used in the test reports.

6.3. Normally, the end-use of the product is not relevant independently, to determine classification. But as a corroborative fact, it does have relevance. It has been contended by the appellant that a calcined [where thermal decomposition takes place] calcium phosphate is not usable in manufacture of fine bone china tableware as it loses its binding properties. If we calcine the earthen soil, as it is done for making earthen pot, the properties change to such an extent that the powdered calcined earth would not have binding properties. This is a good example, theoretically. Since the goods in question are not imported under end-use condition, I cannot use this as sole evidence. Yet, importer being a ceramics manufacturer, it does make sense in conjunction with other evidences that they would not import a completely calcined calcium phosphate.

6.4. The importer has also produced the copy of following Bills of Entry of their own imports at Nhava Sheva, Mumbai, where classification of the product of the same description and from the same supplier has been determined under CTSH 25102030:

Sl. No.	Bill of Entry No. & date	Product description
1	892882 dated 10.2.2010	Apatite(ground) Calcium phosphate
2	910025 dated 22.02.2010	Apatite(ground) Calcium phosphate
3	941876 dated 15.3.2010	Apatite(ground) Calcium phosphate
4	948531 dated 19.3.2010	Apatite(ground) Calcium phosphate
5	955704 dated 24.3.2010	Apatite(ground) Calcium phosphate

While classification by other formation is not a binding classification and the classification must be determined based on the nature and composition of goods importer and presented and not simply what was decided earlier, these factors can be referred in conjunction with other facts and evidences because it does give indication about the practice. Further, non-challenge of earlier change in classification by the same formation shall not make the change binding on the appellant.

7. Before parting, I must observe that the assessing officer must frame an objective test memo and seek specific details of composition which are relevant to determine classification as also testing method.

8. From the matrix of facts and technical details, I am of the view that the goods in question here are correctly classifiable under CTSH 25102030 of the First Schedule to the Customs Tariff Act, 1962. Accordingly, the impugned assessment order is set aside and appeal is allowed wi consequential relief.

सत्यापित/ATTESTED

अधीक्षक/SUPERINTENDENT
सीमा शुल्क (अपील)/CUSTOMS(APPEALS)
अहमदाबाद/AHMEDABAD.

05/09/2011
(PAWAN KUMAR SINHA)
COMMISSIONER (APPEALS)
CUSTOMS, AHMEDABAD

By Registered Post A.D.

F. No: S/49-07/CUS/AHD/2011 Dated 05/09/2011

To,

M/s. Mudrika Ceramics (I) Ltd.,
Plot No. 461, GIDC, Por, Ramangamdi,
N.H.No.8,
Vadodara- 391 243

Copy to:

1. The Chief Commissioner of Customs, Gujarat Zone, Ahmedabad
2. The Commissioner of Customs, Custom House ,Ahmedabad
3 The Assistant Commissioner of Customs, ICD-Dashrath, Vadodara
4. Guard File

5.3 We also note that the impugned order as well as the submissions made by the Ld. AR, to the effect that the product literature and material safety data sheet will show that the goods are processed before being exported to India, refer to the same process as was discussed in the said OIA dt.5.9.11, as reproduced above. The revenue department did not raise any grievance against such OIA dated 05.09.2011 and accepted it on merits.

5.4 Also, the re-test report has clearly stated that the product in question of "natural" and not "synthetic" and as such, classification under CTH 28 per se cannot be upheld. Coming to the issue whether the product is "calcined" or not, again, we agree with the above analysis made in the OIA dt.5.9.11, that the term "calcined' cannot be understood in generic sense, but would necessarily require thermal decomposition of the crystalline structure, which is admittedly missing in the present case. Chapter Note 1 to Chapter 25 as well as The Explanatory Notes to HSN for Chapter 25 and 28 clearly suggest that the product kept out of the purview of Chapter 25, ibid, require roasting, fusion or calcination to such extent so as to change the crystalline structure to the extent of thermal decomposition.

5.5 Also, we agree with the averment raised by the Appellant that even if the imported goods were calcined, and even if it is omitted from purview of Chapter 25, still it cannot be classified under Chapter 28, but at the most may be classifiable under Chapter 31. The present case therefore must fail. However, for the above reason, since the imported goods are not shown to be calcined, they remain classifiable under CTH 2510 only.

5.6 As against the specific averment made by the Appellant in this regard, the test/retest report as well as the contents of cross examination of Shri. V. Suresh JT Director (NFSG), CRCL, New Delhi has nowhere brought on record that there was any thermal decomposition of crystalline structure of the product and hence, the said product was not calcined at all. In light of the above as well as the HSN Explanatory Notes, which are a safe guide to decide Customs classification issues, the goods do not appear to be omitted from the purview of Chapter 25 at all.

5.7 Further, it has come out during the course of cross examination of Shri. V. Suresh JT Director(NFSG), CRCL, New Delhi had specifically accepted that the product was moist in nature when being retested and also stated that it was not hygroscopic in nature, and the LOI was found to be less than 1%. If the sample was already calcined, the same would not have any inherent moisture or would not have any Loss on Ignition as such, and this also shows that it could not have been in calcined state even otherwise.

5.8 Also, all subsequent imports, which were subjected to provisional assessment, were subjected to testing / retesting and based on ad-verbatim identical reports by CRCL, all classifications have been finally approved under Chapter 25 only, and not under Chapter 28. There is no reason why a different view should be taken in the intervening period for the present dispute as well, more so, when the re-test report in the present case too does not justify classifying the product under CTH 2835 at all.

5.9 The product is admittedly natural and not calcined, and as such, being mere mineral, and accepted by the Customs department for previous period as well as all subsequent imports into India, should be therefore correctly classified under CTH 2510 as claimed by the Appellant and not under CTH 2835.

5.10 We also find that the UK Tariff Ruling obtained by the overseas supplier viz. M/s. Global Ceramics, too has confirmed that the goods, i.e. Natural Calcium Phosphate (Apatite) used for production of ceramic tableware is a natural mineral product falling under Tariff Heading 2510 only. While such ruling may not otherwise be a binding judicial precedent, however, it has sufficient persuasive value as rightly argued by the Ld. Counsel for the Appellant. This is also reinforced by the independent technical evidence in form of study report by Lucideon, a world renowned testing facility as argued by the Appellant, which has also unequivocally certified that the supplier’s product was natural mineral product and not calcined in absence of any thermal decomposition.

5.11 No doubt, any chemically precipitated calcium phosphate, would be classifiable under CTH 2835, however, for that purpose, it would be required to be shown that the end product has traces or characteristics of a product obtained by treating tricalcium phosphate contained in bones first with hydrochloric acid and then sodium hydroxide or by precipitating a solution of trisodium orthophosphate by means of calcium chloride in presence of Ammonia, as also evident as per Explanatory Notes to HSN for Tariff Heading 2835. Admittedly the goods in question were found to be natural and not precipitated in the re-test.

5.12 There is nothing on record to suggest that the goods were not natural Calcium Phosphate or Apatite Calcium Phosphate, which require to be classified under CTH 2510 alone being the most specific classification based on description as per General Rules of Interpretation for Tariff.

5.13 Since on merits of the issue, the product is found classifiable under CTH 2510 itself, and the demand therefore must fail, we do not deem it necessary to deal with various other averments raised by the Appellant. Suffice it to say, we do not see any reason to personally penalise either the Directors of importer, or CHA or the other importers for having engaged in communication with overseas supplier to put proper and correct description of goods on documents, or for that matter, the overseas supplier itself, since the goods were always classifiable under CTH 2510 as natural mineral itself all along.

6. Accordingly, the impugned orders are quashed and set aside and the appeals are allowed with consequential relief.

(Pronounced in the open court on 24.01.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha