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

REGIONAL BENCH-COURT NO. 3

Customs Appeal No. 10389 of 2023- DB

(Arising out of OIO-AHM-CUSTM-000-COM-034-35-22-23 dated 07/03/2023 passed by Commissioner of Customs- Ahmedabad)

ARTABROCH CERAMICS PVT LTD ....**Appellant**
1011/2 Chandan Metal Compound Gorwa,
Vadodara, Gujarat- 390016

VERSUS

COMMISSIONER OF CUSTOMS – AHMEDABAD ......**Respondent**
Office of The Pr. Commissioner of Customs,
1st Floor, Customs House, Opposite Old High Court,
Navrangpura, Ahmedabad, Gujarat- 380009

WITH

(i) Customs Appeal No. 10383 of 2023- DB (GURU PRAKASH ENTERPRISE)
(ii) Customs Appeal No. 10390 of 2023- DB (SHRI RISHABH T PATEL)
(iii) Customs Appeal No. 10391 of 2023- DB (NEXUS LOGISTICS)
(iv) Customs Appeal No. 10392 of 2023- DB (SHRI HIRANMAY JOSHI)
(v) Customs Appeal No. 10393 of 2023- DB (SHRI HITESH A PATNI)
(vi) Customs Appeal No. 10394 of 2023- DB (TEJAS PATNI)

APPEARANCE:
Shri Saurabh Dixit Advocate & Shri Vikas Mehta Consultant for the Appellant
Shri Sanjay Kumar, Superintendent (AR), for the Respondent

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

Final Order No. 11378-11384/2024

DATE OF HEARING: 26.04.2024
DATE OF DECISION: 18.06.2024

RAMESH NAIR

In the present appeals, the differential Customs duty demand has been confirmed by reclassifying the imported "Apatite (Ground) Calcium Phosphate" from CTH 25102030 as claimed by the importer, to CTH 28352690, alongwith interest and penalty against the main Appellant i.e. M/s. Arta Broch Ceramics P. Ltd. as well as personal penalties are imposed on the Director, as well as CHA firm and its partners.

1.1 The following duty and penalties are imposed vide the impugned order:

A).Arta Broch Ceramics Pvt.Ltd..:-

SR No	Appeal No.	Period involved	SCN date	OIO No.	Amount of duty (RS)	Amt. of penalty (Rs.)
1	C/10389/2023	April'17 to Feb'20	23.03.2022 & 16.03.202	AHM-CUSTM-000-COM-034-35-22-23 dated. 07.03.2023	67,45,503/- (61,77,867/- + 5,67,636)	67,45,503/- (61,77,867/- + 5,67,636) under Section 28AA, Rs. 6,56,000/- u/s 114AA & Rs. 1,80,000/- U/s 117 Customs Act, 1962

B). Shri Rishabh T Patel:-

SR. No	Appeal No.	Amt. of penalty
1	C/10390/2023	Rs. 3,56,000- U/s. 112(a)(b) and Rs. 1,80,000/- U/s. 114AA and Rs. 90,000/- U/s. 117 of Customs Act, 1962

C). M/s. Nexus Logistics:-

SR. No	Appeal No.	Amt. of penalty
1	C/10391/2023	Rs. U/s. 1,50,000/-112(a)& (b) and Rs. 75,000/- U/s. 114AA of Customs Act, 1962

D). Shri Hiranmay Joshi:-

SR. No	Appeal No.	Amt. of penalty

1	C/10392/2023	Rs.75000/- U/s. 112(a)& (b) and Rs. 35,000/- U/s. 114AA of Customs Act, 1962

E).Shri Hitesh A Patni-

SR. No	Appeal No.	Amt. of penalty
1	C/10393/2023	Rs.75,000/- U/s. 112(a)& (b) and Rs. 35,000/- U/s. 114AA of Customs Act, 1962

F).TEJAS PATNI -

SR. No	Appeal No.	Amt. of penalty
1	C/10394/2023	Rs.75,000/- U/s. 112(a)& (b) and Rs. 35,000/- U/s. 114AA of Customs Act, 1962

G).GURU PRAKASH ENTERPRISE -

SR. No	Appeal No.	Amt. of penalty
1	C/10383/2023	Rs.1,50,000/- U/s. 112(a)& (b) and Rs. 75,000/- U/s. 114AA of Customs Act, 1962

1.2 Being aggrieved by the impugned Order-in-Original, the present appeals are filed by the appellants.

2. Shri Saurabh Dixit, Learned Counsel along with Shri Vikas Mehta, Consultant for the appellants submitted that the Appellant had imported "Apatite (Ground) Calcium Phosphate", which is a natural product, from M/s. Global Ceramics as well as M/s. East Gate, and all the consignments are treated to be identical in the present proceedings inasmuch as based on

single consignment sampling and testing, case is booked for all the imports made during the material period.

2.1 He further submitted that in the present case, sample was drawn from factory premises somewhere in November' 2020 for goods imported and cleared from Customs port as early as in Feb'2020 and such test report dated 01.01.2021 (which suggested that the sample was synthetic and calcined) cannot be relied upon in terms of judgment of the Hon'ble Punjab and Haryana High Court in the cases of Raghav Woolen Mills P. Ltd. 2020 (372) E.L.T. 42 (P & H) and Super Oil Company 2020 (372) E.L.T. 536 (P & H). He also submitted that neither sample drawl nor testing was as per BIS specifications. Notwithstanding this, he submitted that neither re-test was allowed nor cross examination of the witnesses/chemical examiner was allowed and hence, the test-report has lost its evidentiary value.

2.2 He submitted that under identical circumstances, for the very same product and that too imported from one of the common suppliers viz. M/s. Global Ceramics, this Tribunal in the case of Mudraka Ceramics (I) Limited reported at (2024) 16 Centax 432 (Tri.-Ahmd) has finally concluded the issue in their favour, by classifying the same product under Chapter 25 as opposed to Chapter 28. Apart from the fact that parallel inquiry was conducted by DRI against the Appellant as well as M/s. Mudrika simultaneously, he submits that identical material safety datasheet and product literature and identical test report was also involved in the said case of Mudrika, and after detailed analysis of the facto legal position, the Hon'ble Tribunal in the said case concluded that the product Calcium Phosphate (Apatite) is a natural mineral product and not calcined and hence, not to be classified under CTH 28352690 but to be rightly classified under CTH 25102030.

2.3 He also submitted that for the past period, the very same product was provisionally assessed under BE No.9193734 dt.6.4.17 and after drawl of sample and testing the same, the goods were classified under Chapter 25, which was not disputed by revenue authorities as well and there is no reason to disturb such classification as such. Not only this, the concurrent periodic imports are regularly assessed provisionally and after testing the samples, are being classified under Chapter 25 only by Customs authorities. He submitted that for period prior to as well as after the disputed imports, the very same goods from very same suppliers are being classified concurrently under Chapter 25 and the duty demand for intervening period cannot be raised by classifying the product under Chapter 28 at all. He further submitted that since the imported goods were only natural, even if calcined, they can at the most be classified under CTH 31 but under no circumstances can they be classified under CTH 2835.

2.4 He also relied upon the OIA dated 05.09.2011 passed earlier in the case of M/s. Mudrika Ceramics on very same product classification related issue and also relied upon various HSN Explanatory Notes, Tariff Entries as well as various decisions on the issue, to argue that the product was in Natural state and was not a calcined product nor a chemical product at all and hence, was required to be classified only under CTH 25102030 as originally claimed by them. He also submitted that no chemical traces are found in the test report anyway and it is not the case of the revenue that the product was obtained from process of chemical precipitation or processing on any chemicals as well.

3. Shri Sanjay Kumar, Learned Superintendent (AR) for the department reiterates the findings made by the Adjudicating Authority in the impugned order.

4. Heard both the sides and perused the records. We find that an absolutely identical issue, also based on parallel inquiry conducted against an identically situated importer viz. M/s. Mudrika Ceramics, was recently decided by this Tribunal as reported at 2024(16) CENTAX432 (Tri-Ahm), wherein it was held as follows:-

> *"**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."*

4.1 We note that after detailed examination of Tariff entries as well as HSN Explanatory Notes, this Tribunal concluded that the Calcium Phosphate (Apatite) was required to be classified under CTH 2510 and not under CTH 2835. While no retest or cross examination of the chemical examiner was granted in this case, however, we note that the very same overseas supplier viz. Global Ceramics is involved even in the present case and hence, one can safely conclude that for the same supplier related material, once the classification is already concluded by this Tribunal, identical view is required to be taken in this case as well. Also, the revenue itself appears to be suggesting that the goods supplied by M/s. East Gate and M/s. Global Ceramics are identical and no distinction is made for classification by revenue itself in the present proceedings and hence, the above decision of this Tribunal will apply on all fours to the present case as well. Also, M/s Mudrika as well as the present Appellant importer are engaged in identical business of producing ceramic tableware and the nature of use of the imported goods is also same even in the present case.

4.2 Not only this, it is also observed that just as in the said case of M/s. Mudrika Ceramics, even in the present appeals, the very same situation arises i.e. imports prior to as well as after the disputed period are concurrently classified by Customs under CTH 2510 only, that too after proper testing and verification. Even for this reason, it must be concluded that the disputed goods in question for the material period were rightly classified by the Appellants under CTH 2510 and are not to be classified under CTH 2835 as suggested by revenue department.

4.3 Just as in the above case of M/s. Mudrika, even here, there is no cause for any penalty to be imposed on the Director or CHA and its Partners/authorised signatories as well.

5. Accordingly, the impugned orders are *set aside* and the appeals are allowed with consequential relief.

(Pronounced in the open court on 18.06.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha