

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

REGIONAL BENCH- COURT NO.3

Customs Appeal No.11015 of 2021

(Arising out of OIA-AHD-CUSTOM-000-APP-901-906-21-22 dated 02/09/2021 passed by
Commissioner of Central Excise, Customs and Service Tax-Ahmedabad)

ASTRAL LIMITED

Jyotindra Thakar, Astral House, 207/1,
Behind Rajpath Club, Off. S.G. Highway
Ahmedabad, Gujarat

.....Appellant

VERSUS

C.C.-AHMEDABAD

Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

.....Respondent

WITH

- **Customs Appeal No.11016 of 2021 (ASTRAL LIMITED)**
- **Customs Appeal No.11014 of 2021 (ASTRAL LIMITED)**
- **Customs Appeal No.11013 of 2021 (ASTRAL LIMITED)**
- **Customs Appeal No.11012 of 2021 (ASTRAL LIMITED)**
- **Customs Appeal No.11008 of 2021 (ASTRAL LIMITED)**

APPEARANCE:

Shri. Rajat Bose and Shri. Neeladri C, Advocates for the Appellant
Shri. G.K Kirupanandan, Superintendent (Authorized Representative) for the
Respondent

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

Final Order No. A/10666-10671 /2022

DATE OF HEARING: 16.02.2022
DATE OF DECISION: 07.06.2022

RAMESH NAIR

The brief facts of the case are that the appellant imported modifier for PVC "Kane Ace B-564" from Malaysia and in the ex-bond Bill of entry, the appellant classified the said product under CTH 39029000 and claimed exemption as available against entry no. 457 (I) of Notification No.46/2011-CUS. It is the department's case that the appellant have wrongly classified the item under 39029000 as it should have been classified under CTH 39069090 as any Acrylic Polymers. The adjudicating authority by passing

adjudication order re-classified the goods under CTH 39069090. Consequently, exemption claimed by the appellant was denied however, the benefit of concessional rate of duty was extended, in serial no. 466 and accordingly, differential duty, liability was confirmed. Being aggrieved by the Order-In-Original, the appellant filed appeals before the Commissioner (Appeals) who upholding the classification of said product under 39069090 and consequential denial of exemption claimed by the appellant in terms of Sl.No.457 (I) of the Notification No.46/2011-Cus rejected the appeals. Therefore, the present appeals filed by the appellant.

2. Shri Rajat Bose, learned counsel along with Shri Neeladri Chakraborty, Advocate appeared for the appellant. Shri Rajat Bose in his argument submits that the product’s appearance is in white powder form and as part of chemical composition the product comprises chemical of MMA-BD-ST-Acrylic Copolymer consisting of MMA (Methyl Methacrylate), BD (butadiene) ST (Styrene) and AE (Acrylic Ester) as co-monomers. The composition of order is as follows:-

Product	Methyl Methacrylate	Butadiene	Styrene	Acryl Ester
Kane Ace B-564	18.5-23.5%	67.5-72.5%	2.5-7.5%	2.5-7.5%

It is evident that product is a MBS based polymer primarily consisting of butadiene as a major component. The products are not acrylic based polymer and MMA-BD-ST-Acrylic Copolymer (Acrylic Modified MBS Polymer-Co polymer in which none of the constituents are more than 95% by weight. He referred to technical data sheet (TDS) Safety Data Sheet (SDS) providing the chemical composition of the products and certificate of chemical analysis which are next to the appeal. It is his submission that the product contained butadiene (which is an olefin) as a major component which pre-dominates by weight in the composition. The appellant classified the product under CTH

39029000 which is a residuary entry "other" and a tariff heading 3902 providing for polymers of propylene of other olefins in primary forms. It is relevant to note that the above classification was being historically followed by the appellant and has never been questioned by the customs authority. He further submits that chapter note 4 to chapter 39 of Customs provides that the classification should be on the basis of pre-dominant constituents of co-polymers units of polymers. In the present case, the pre-dominant constituent is butadiene which is in the nature of olefin which covers under Tariff Heading 3902 under the entry 'Polymer of other olefins in primary form'. Therefore, the product imported by the appellant is correctly classifiable under CTH 39029000 and not under 39059090 as claimed by the department.

2.1 He further submits that the adjudicating authority without any scientific explanation and classification notes and without conducting any chemical test has re-classified the product under CTH 39069090. He submits that the adjudication authority has decided the classification only by its nomenclature. In support of his above submission he placed reliance on the following judgments:-

- M/S. KEIHIN AUTOMOTIVE SYSTEMS INDIA PVT LTD – 2020 (1) TMI 595- CESTAT –NEW DELHI
- MANISH PHARMA PLASTO PVT LTD- 1999 (5) TMI 33 – HIGH COURT OF DELHI
- WESTINGHOUSE SAXBY FARMER LTD- 2021(3) TMI 291-SC
- COMMISSIONER OF CUSTOMS AND SERVICE TAX BANGALORE VS. M/S CMC LTD – 2016 (7) TMI 143 – CESTAT BANGALORE
- ESCORTS LIMITED – 2003 (4) TMI 373 CESTAT NEW DELHI
- M/S POLARIS INDIA PVT LTD- 2017 (9) TMI 64- CESTAT- NEW DELHI
- M/s Parle Agro (P) Ltd ETC- 2017 (5) TMI 592 – SC.

3. Shri G. Kirupanandan, Learned superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the records. We find that both the lower authorities have decided the classification of the goods imported by the appellant under CTH 39069090 as against the appellant’s declaration under CTH 390229000. The Authorities decided the classification on the basis of nomenclature of the product i.e. picking up words Acrylic Polymer from the constituents of product in question. We find that the revenue has not firstly conducted any chemical test of the product to ascertain the composition of the product. Moreover despite considering the composition of the product they only picked up one of the constituent i.e. acrylic ester. For the ease of reference the composition of product given as under:

Product	Methyl Methacrylate	Butadiene	Styrene	Acryl Ester
Kane Ace B-564	18.5-23.5%	67.5-72.5%	2.5-7.5%	2.5-7.5%

From the above composition it is undisputed that the pre-dominant constituent is butadiene having 67.5-72.5%. To classify any polymer product under Chapter 39 the relevant authorities are reproduced below:

"...4. The expressions "copolymers" covers all polymers in which no single monomer unit contributes 95% or more by weight to the total polymer content

For the purposes of this Chapter, except where the context otherwise requires, copolymers (including co-Poly condensates, co-polyaddition products, block copolymers and graft copolymers) and polymer blends are to be classified in the heading covering polymers of that co-monomer unit which predominates by weight over every other single co-monomer unit.

For the purposes of this Note, constituent co-monomer units of polymers falling in the same heading shall be taken together.

If no single co-monomer unit predominates, copolymers or polymer blends, as the case may be, are to be classified in the heading which occurs last in numerical order among those which equally merit consideration...."

4.1 In the present case it is the admitted fact that co-polymer does not have any single monomer unit which contributes 95% or more by weight. As per the above note, co-polymers are to be classified under the heading covering polymer of co-monomers unit which pre-dominates by weight over every single co-monomer unit. In the present case undisputedly the butadiene is pre dominantly constituent. The butadiene is nothing but the olefin. The rival entry of CTH is as under:

"CTH 3902: Polymers of propylene or of others olefins, in primary forms

CTH 39029000: Other

CTH 3906: Acrylic polymers in primary forms

-Poly (Methyl Methacrylate)

CTH 39069090: Other"

From the above entry it can be seen that the products i.e. polymer of other olefin in primary form is classified under 390290000 and other.

4.2 In the present case as given above the product imported by the appellant consisted of pre-dominantly of Butadiene which is an olefin therefore, in terms of Chapter note 4 to chapter 39 the product is correctly classifiable under CTH 390290000. The Adjudicating Authority and the Commissioner (Appeals) have not considered this statutory provision of central excise tariff act, they have also not considered the chemical characteristics of the product therefore, the classification decided only on the basis of nomenclature that too picking up words from the full

nomenclature of the name of the product is absolutely baseless and cannot be sustained.

5. As per our above discussion and finding the appellant has correctly classified the imported goods under CTH 390290000. Accordingly the impugned order is set aside and appeals are allowed with consequential relief. Early hearing applications are also disposed of.

(Pronounced in the open court on 07.06.2022)

RAMESH NAIR
MEMBER (JUDICIAL)

RAJU
MEMBER (TECHNICAL)

Geeta