

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

REGIONAL BENCH – COURT NO. 03

EXCISE APPEAL NO. 11952 Of 2018

[Arising out of OIA-AHM-EXCUS-003-APP-0291-17-18 dated 31/03/2018 passed by
Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-
AHMEDABAD]

C.C.E. & S.T.-AHMEDABAD-III

.....Appellant

Custom House... 2nd Floor,
Op. Old Gujarat High Court, Navrangpura,
Ahmedabad,
Gujarat-380009

Vs.

MANEK CHEMICALS PVT LTD

.....Respondent

Opp. ONGC Colony, Palavasna,
Mehsana,
Gujarat

APPEARANCE:

Shri Mihir G Rayka, Additional Commissioner (Authorized Representative) for the
Appellant

Shri Amal Dave, Advocate for the Respondent

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

FINAL ORDER NO. 11971/2024

Date of Hearing: 03.07.2024

Date of Decision: 10.09.2024

C L MAHAR

The brief facts of the matter are that the respondent assessee M/s. Manek Chemicals Pvt Ltd are engaged in manufacturing and clearance of 'Washed Clay' under the trade name 'BLEACH-9'. The department has entertained a view that respondent assesses has been misclassifying their product as 'Activated Earth' in guise of 'Washed Clay' or 'BLEACH-9' by misclassifying the same under chapter sub heading No. 25.05 claiming NIL rate of duty.

2. The department was of the view that 'Activated Earth' or 'Washed Clay' or 'Bleach-9 Earth' manufactured by the respondent is rightly classifiable under chapter sub heading 38.02 of the first schedule to the Central Excise

Tariff Act, 1985 attracts Central Excise duty. Various periodic show cause notice came to be issued which were adjudicated by the learned Joint Commissioner vide order order-in-original dated 21st December, 2017 whereunder the proceedings initiated against the respondent assessee for classifying the Bleach-9 product under the chapter sub heading 38.02 was dropped and it was held that the product manufactured by the respondent assessee is rightly classifiable under chapter sub heading 25.05 and thus attracts the NIL rates of duty. The department has filed an appeal against the impugned order-in-original dated 21st December, 2017 before the Commissioner (Appeals) who vide its order dated 15.05.2018 has upheld the impugned order-in-original and the appeal filed by the revenue was dismissed. The department has filed the present appeal against the impugned order-in-appeal dated 15.05.2018.

3. We have heard both the sides, we find that the original adjudicating authority in its order dated 21st December, 2017 has held as follows:

"33.20 Apart from the above test report, I have also perused letter of the said assessee dated 21.10.2007, addressed to Dr. Chandrasekharam, IIT, Mumbai, wherein he has communicated statement / Annexure showing technical characteristics of raw clay and similar clay obtained by washing it with water called Bleach-9. The said assessee had forwarded above statement / Annexure as referred in the test result dated 13.09.2004 of Shri Narendra Kumar, Chemical Examiner, Gr.I, CRCL Vadodara to know the opinion of Dr. Chandrasekharam, IIT Mumbai whether any activation of raw clay can be inferred if there was change in the technical characteristics like moisture, reactivity, alkalinity etc. as reported in the submission after clay was washed by the normal water. In response to above letter, Dr. Chandrasekharam, IIT Mumbai vide his letter dated 21.10.2007 opined that Bleach-9 is also raw clay and not activated clay/earth in view of the technical parameters of both the clays are same as reported in the statement. He informed that clay washed with water and dried is not termed as activated clay. The properties of raw clay washed with water will not differ.

33.21 Similarly, I have perused Test result dated 22.10.2007 received from Shri M. M. Shah of M/s. Vaibhav Enviro Consultant, who submitted their report to the said assessee. The opinion of Shri M M Shah is reproduced here.

"Opinion; technical characteristics of bleach 9 not show any activation of clay (bantonite) compared to technical characteristic of unwashed clay with water. There is slight changes in moisture content, alkalinity, reactivity etc. PH is alkaline in wash water. From my experience of 35 years in teaching at LDCE, activation is not taking part in wash water clay (bantonite). Wash water is collected for sedimentation of clay and waste water is used in the second batch as make up water."

33.22. I find that the conclusions of both the above test results submitted by Dr. Chandrasekhara, IIT Mumbai and Shri M. M. Shah of M/s. Vaibhav Enviro Consultant are similar. They are opined that technical characteristic of bleach 9 not show any activation of clay (Bantonite). The conclusion of Shri Dr. T. A. Shreenivasa Rao, Joint Director, CRCL, New Delhi, Submitted by his reports dated 19.12.2016 and 28.09.2017 is similar to above said both conclusions.

33.23. In view of the foregoing paras, I find that as per direction of Hon'ble High Court of Gujarat, the department has called for final reports from the Chief Chemist, CRCL, New Delhi alongwith all relevant documents and contention of the said assessee. On the basis of the final test results dated 19.12.2016 and 28.09.2017 received from Dr. T. A. Shreenivassa Rao, Joint Director, CRCL, New Delhi, who has submitted their final opinion on the basis of all the details/documents, earlier test reports, submitted to them, I come to the conclusion that the Bleach 9, the mineral clay was not activated clay by washing it water, I conclude that if the clay was not activated, the same was remain as "Mineral substances". For classification of "Mineral substance", I observe chapter sub heading which are as under.

25.05	2505.00	Mineral substances not elsewhere specified (including clay, earth colours, natural abrasives, sulphurs, slate and stone), lime; plasters with a basis of calcium sulphate, whether or not coloured, but not including plasters specially prepared for use indentry
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38.02	3802.00	Activated carbon; <u>activated natural mineral products</u>; animal black, including spent animal black
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I find that the "activated carbon; activated natural mineral products cover under the Chapter Sub heading 3802, whereas "Mineral substances not elsewhere specified (including clay, earth colours, natural abrasives, sulphurs, state and stone)" cover under Chapter Sub Heading 2505. So, I find that the subject clay products cannot be classified under Chapter heading 3802, but the same can be classified as "Mineral substances

(including clay...)” falling under chapter heading 2505, which attract Nil rate of duty.”

3.1 We find that the adjudicating authority in the above mentioned order has concluded that the product under the dispute named 'Bleach 9' is classifiable under chapter heading 25.05 under category of mineral substances not elsewhere specified (including clay, earth colours natural abrasives, sulphurs, slate and stone). We find that above conclusion have been formed by the original adjudicating authority on the basis of test reports as mentioned proceedings paras. The order-in-original has been endorsed by the learned Commissioner (Appeals) holding that the impugned order-in-original decided the classification of 'Bleach-9 Clay' on the basis of the technical opinions obtained by the department and there was no evidence on record to contradict the findings given in the order-in-original.

3.2 We have perused the records of the appeal. We are of the opinion that the adjudicating authority has reached the conclusion that the goods manufacture by the respondent assessee, as per the technical opinion given by M. M. Shah of M/s. Vaibhav Environ Consultant as well as by Dr. Chandrasekharam, IIT Mumbai vide its letter dated 21st October, 2007, wherein it has been opined that 'Bleach-9' is also raw clay and not Activated Clay / Earth. It has been mentioned that the clay washed with water and dried is not termed as 'Activated Clay' and therefore the properties of the raw clay washed with water will not have different chemical parameters and therefore shall remains same as that of the natural clay. The same opinion has been given by Shri M. M. Shah of M/s. Vaibhav Enviro Consultant dated 22nd October, 2007. The adjudicating authority has relied upon the technical and reports reached to the conclusion that the product namely 'Bleach-9' is rightly classifiable under chapter 25.05 of the Central Excise Tariff Act, 1985. We find that the department has not adduced any evidence to contradict the findings given the above two reports which has formed the basis of

adjudicating authority to decide classification of that the product 'Bleach-9' under Central Excise Tariff heading 25.05.

4. In view of the above, we find that no fresh evidence has been adduced by the department to challenge the findings given in the impugned order-in-original as well as order-in-appeal and we therefore, find no merit in the appeal of the department.

5. Accordingly, the Appeal is dismissed.

(Order pronounced in the open court on 10.09.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C. L. MAHAR)
MEMBER (TECHNICAL)