

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD**

E/56464/2013-EX[DB]

(Arising out of Order-in-Original No.57/COMMR./MRT/2012 dated 20.12.2012 passed by Commissioner, Customs & Central Excise, Meerut.)

M/s. Gulshan Polyols Ltd.

...APPELLANT(S)

VERSUS

Commissioner of Central Excise & Service Tax, Meerut

RESPONDENT (S)

APPEARANCE

Shri B.L.Narasimhan (Advocate) for the Appellant (s)
Shri Gyanendra Kumar Tripathi (A.C.) (A.R.) for the Revenue

CORAM:

SHRI ASHOK JINDAL, HON'BLE MEMBER(JUDICIAL)
SHRI ANIL G. SHAKKARWAR, HON'BLE MEMBER(TECHNICAL)

DATE OF HEARING/DATE OF DECISION : 26.12.2018

FINAL ORDER NO.72930/2018

Per Ashok Jindal :

The appellant is in appeal against the impugned order challenging the demand of Rs.2,88,22,592/- confirmed along with interest and penalty for the period August 2006 to March 2011 on the ground that the appellant's product "Ground Natural Calcium Carbonate" is not classifiable under chapter heading 25.30 of Central Excise Tariff Act, 1985 as claimed by the appellant and the same is to be classified under chapter heading 2836 of Central Excise Act.

2. The facts of the case are that the appellant were engaged in manufacture of Precipitated Calcium Carbonate and were classifying the

same under Chapter heading 28 of Central Excise Tariff Act, 1985. They introduced the new product namely "Ground Natural Calcium Carbonate" and intimated to the appellant in July and August 2006 claiming that as such as there is no involvement of Precipitated Calcium Carbonate, therefore the same would be classifiable under chapter 25 of Central Excise Tariff Act, 1985. On being intimation, various correspondences were exchanged between the appellant as well as the Revenue with regard to manufacturing process flow chart etc.. Samples were also drawn and got tested. A show cause notice was issued to the appellant on 01.09.2011 by invoking extended period of limitation to classify the said new product namely "Ground Natural Calcium Carbonate" under chapter heading 28.36 of Central Excise Tariff Act, 1985. Thereafter adjudication took place and demand of duty was confirmed by classifying the said product under chapter heading 28.36 of Central Excise Tariff Act, 1985. Against the said order, the appellant is before us.

3. The learned Counsel for the appellants submits that during the course of investigation, the product was go tested and as per the test report the product in question is not Precipitated Calcium Carbonate therefore same merits classification under chapter 25 of Central Excise Tariff Act, 1985 as classified by the appellant therefore impugned order is to be set aside. To support his contentions he relied on the decision of this Tribunal in the case of *Shakshi Makfin Pvt.Ltd. v. Commissioner of C.Ex., Panchkula* [2016 (343) E.L.T. 972 (Tri.-Chan.)].

4. On the other hand learned A.R. reiterated the findings of the impugned order.

5. Heard the parties and considered the submissions.

6. On hearing both sides we find that short issue arises from the arguments advanced by both sides is whether the "Ground Natural Calcium Carbonate is classifiable under chapter heading 25309090 as claimed by the appellant or under chapter heading 28365000 of the Central Excise Tariff Act, 1985 as claimed by the Revenue.

7. To know what is the product, the test report is the main document. On the basis of test conducted of chemical compounds of the product are relevant to classify the same. Admittedly in this case, the samples were drawn and were sent to a Natural Physical Laboratory, New Delhi and thereafter the samples were sent for examination to the Chemical Examiner, Central Revenue Control Laboratory, New Delhi. As per the test report, the samples do not qualify "Precipitated Calcium Carbonate" as per IS 8167/1978.

8. For better appreciation the results are extracted below:-

EX-M
P-2

CLM/Misc 136
22.1.07

107

Re-allow 4K
AS 24/1/07

APPENDIX - XVIII
TEST MEMO - NO 1/2007

(1) Name of the Factory M/s Gulshan Sugars & Chemicals Ltd, MN.

(2) Description of Samples Ground Calcium Carbonate

(3) Date of drawl and batch No. 11/01/07

(4) Identification mark, if any. #

(5) No. of containers ONE

(6) Quantity 450 grams Approx.

(7) Information vide declaration under Rule 173B/other information if any

(8) The sample is to be tested for Physical properties and Chemical Composition as also how it is different from Precipitated Calcium carbonate.

Signature of the Analysts & Chem. 11/1/07
Authorized Signatory

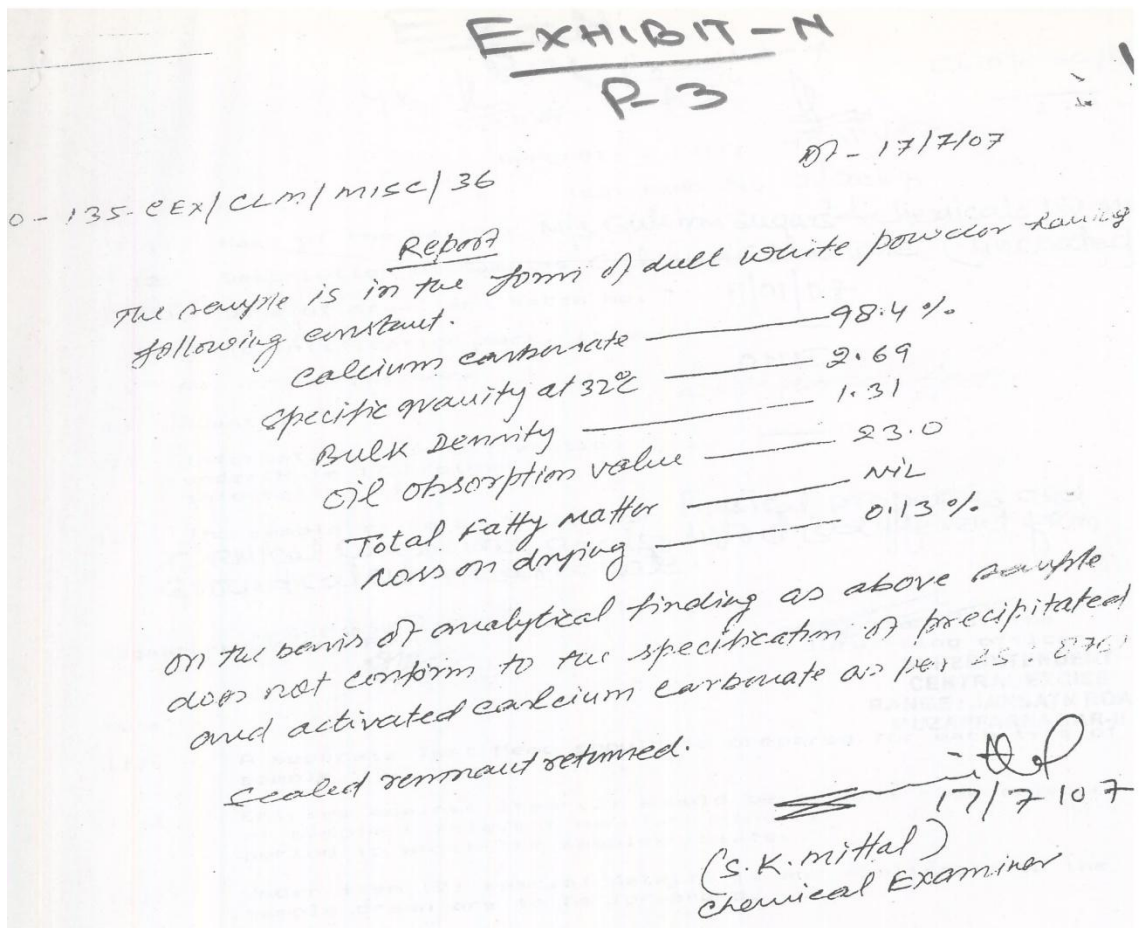
Signature of the forwarding officer
SUPERINTENDENT
CENTRAL EXCISE
RANGE: JANSATH ROAD
MUZAFFARNAGAR-II

Note :

(i) A separate Test Memo should be prepared for each type of sample

(ii) Entries against item (2) should be clearly show category of sample & relevant manufacturing report and the date period to which the samples relates.

(iii) Under item (7) special details if any applicable to the sample drawn are to be forwarded.



9. On going through the test report, we find that the product namely "Ground Natural Calcium Carbonate" is altogether different from "Precipitated Calcium Carbonate", therefore, in the light of the decision of the Tribunal in the case of Shakshi Makfin (supra), the product in question having merit classification under chapter heading 25.30 of Central Excise Tariff Act, 1985. The observation of the Tribunal in the case of Shakshi Makfin (supra) are extracted below:-

"18. The thrust of the impugned order is that the appellant is a manufacturer of precipitated calcium carbonate which is chargeable to duty under CTH 2835 50 00 and is clearing the goods in the guise of lime stone powder, calcite, quick lime are chargeable to nil rate of duty under CTH 2521 00 90, 2522 10 00 and 2530 90 30. During the course of investigation, the samples were drawn from the premises of buyers as well as from the appellant to ascertain the facts whether the sample of precipitated calcium carbonate falling under CTH 2835 50 00 or

calcium powder. The report has been submitted by the CRCL on 29-11-2007 wherein it has been clearly stated as under :

Each of the ten samples in the form of white fine powder. Each has the following constants –

S. No.	Lab. No. & date	Sample No.	% of calcium carbonate	Oil Absorption	Bulk density/cc	Loss of ignition
1.	C.Ex/CLD/Int/Misc/25	3/TPPL/6/6/07	98.1	22.0	1.4	44.2
2.	C.Ex/CLD/Int/Misc/26	04/white	97.6	21.0	1.1	45.2
3.	C.Ex/CLD/Int/Misc/27	03/yellow	98.2	25.0	1.2	45.8
4.	C.Ex/CLD/Int/Misc/28	1/07-08	97.8	25.7	1.0	42.9
5.	C.Ex/CLD/Int/Misc/29	1/07-08	98.0	17.0	1.2	45.4
6.	C.Ex/CLD/Int/Misc/30	9/Kunal/07	98.2	24.0	1.1	43.7
7.	C.Ex/CLD/Int/Misc/31	8/Kunal/07	97.8	22.0	1.2	44.0
8.	C.Ex/CLD/Int/Misc/32	7/Kunal/07	98.0	25.1	1.1	43.8
9.	C.Ex/CLD/Int/Misc/33	5/Kunal/07	98.3	26.0	1.0	43.6
10.	C.Ex/CLD/Int/Misc/34	-----	98.1	23.4	1.2	43.2

On the basis of analytical finding as above samples do not conform to the specification of precipitated calcium carbonate as per IS : 8767-1978.

Sealed remnant returned.

19. The said report clearly shows that the samples drawn do not conform to the specification of precipitated calcium carbonate as per IS : 8767-1978. On the said report, no finding has been given by the chemical examiner with regard to classification but clearly stated that these are the samples drawn are not of precipitated calcium carbonate. As it is fact on record, the appellant is manufacturer of lime stone, quick lime powder, calcite which are chargeable to nil rate of duty under CTH 2521 00 90. 2522 10 00 and 2530 90 30 respectively. In that circumstance, without any corroborative evidence, it cannot be alleged against the appellant that the appellant is only manufacturing precipitated calcium carbonate.”

10. In view of the above observation, we hold that the appellant has correctly classified the “Ground Natural Calcium Carbonate” under

chapter heading 25.30 of Central Excise Tariff Act, 1985 as Revenue has failed to produce any corroborative evidence in support of their classification. Therefore, the impugned order is set aside.

11. In result, the appeal is allowed with consequential relief, if any.

(Dictated and pronounced in the open Court.)

SD/
(ANIL G. SHAKKARWAR)
MEMBER(TECHNICAL)

SD/
(ASHOK JINDAL)
MEMBER (JUDICIAL)

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