CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Excise Appeal No. 50693 of 2015

(Arising out of Order-in-Appeal No. 88-CE/MRT-I/2014 dated 31.10.2014 passed by Commissioner (Appeals), Customs & Central Excise, Meerut-I)

M/s Gulshan Polyols Limited **.....Appellant**
Jansath Road, Muzzaffarnagar
U.P. - 251001.

VERSUS

Commissioner, Central Excise & Customs **....Respondent**
Opposite CCS University
Mangal Pandey Nagar, Meerut-250005.

APPEARANCE:

Shri Atul Gupta, Advocate for the Appellant
Shri B. K. Jain, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO.70237/2021

DATE OF HEARING/DECISION: 06.08.2021

ANIL CHOUDHARY:

The issue in this appeal relates to classification dispute of 'Ground Natural Calcium Carbonate (GNCC) under Chapter heading 25309099 as claimed by the appellant-assessee, or under Chapter 28365000 of the Central Excise Tariff Act, as claimed by the Department.

2. The Appellant is engaged in the manufacture of excisable Uncoated Precipitated Calcium Carbonate (in short **"PCC"**) and the Coated "PCC" falling under CETSH No. 28365000 and CETSH No.

38231900 respectively of the First Schedule of CETA, 1985; and in the processing of natural lime stone to obtain 'Ground Natural Lime Stone Powder' (in short **"GNCC"**) from the month of August 2006, which was claimed to fall under CETSH 25309099, subject to nil rate of duty. The Appellant was duly paying the duty on PCC. The GNCC was natural lime stone powder.

3. GNCC is a natural mineral product as the product was nothing more than natural calcium carbonate, obtained by using the processes- *washing--) jaw crushing--) hammering--) grinding to powder--) wetting by water--) wet grinding in dynamo mills series--) screening--) drying in steam dryers --) packing of the finished product in HDPE woven sacks* duty. The Appellant did not use any chemical process or roasted or calcined to obtain GNCC. The Appellant only used Mechanical process to obtain GNCC.

4. An investigation was conducted and based on the aforesaid investigation, earlier a SCN C. No. V(15)0ff/ Adj-I/87 /2011/10459 dated 01.09.2011 was issued to the Appellant proposing classification of GNCC under CETSH 28365000 and further proposing duty demand of Rs. 2,88,23,592/- alongwith interest.

5. The above referred SCN was confirmed by the Order-in-Original No. 57/ Commr./Meerut-I/2012, dated 20.12.2012.

6. Subsequently, the SCN C. No. V (15) Off/Adj-I/57 /2012/4894 dated 01.05.2012 was issued, in which, in paragraph 32 recorded the fact about the earlier SCN C. No. V(15)0ff/Adj-I/87/2011/10459 dated 01.09.2011 as follows:

"32. Whereas a Show Cause Notice amounting to Rs. 2,88,23,592/-(Two crore eighty-eight lakh twenty three thousand five hundred ninety two Rupees only) on the clearances of the said product made by the party during the period Augustl-2006 to March-20 1 1 has already been issued to the party by the Commissioner, Central Excise Commissionerate, Meerut-I vide letter **C. No. V(l5)0ff/Adj-I/87/201 1/10459 dated-01.09.2011**".

7. Thereafter, the SCN dated 01.05.2012 was confirmed vide Order-in-Original No. 24/Joint Commissioner/Meerut-I/2014 dated 24.03.2014**.** On appeal by the appellant, the said Order-in-original dated 24.03.2014 has been upheld vide the impugned Order-in-Appeal No. 88-CE/MRT-I/2014 dated 31.10.2014**.**

8. It is further urged that this Tribunal vide Final order No. 72930/2018 dated 26.12.2018 allowed the appeal of the appellant and set aside the impugned order recording its finding as follows:-

"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 National 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.

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 changeable 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 Order-in-Original 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 –

Sl. 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."

9. Learned Authorised Representative appearing for the Revenue although relies on the impugned order, however, he admitted that the Department seems to have accepted the earlier order of this Tribunal in the similar matter.

10. Having considered the rival contentions, we find that the issue is squarely covered by the precedent decision of this Tribunal between the very same parties in Excise Appeal No. 56464/2013-EX(DB) vide Final Order No. 72930/2018 dated 26.12.2018. Accordingly, this appeal is also allowed and the impugned order is set aside. The appellant shall be entitled to consequential benefits, in accordance with law.

(Operative part of the order pronounced in open Court).

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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