

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20016 of 2018

(Arising out of Order-in-Appeal No. 932 - 933/2017 dated
26.10.2017 passed by the Commissioner of Customs (Appeals),
Bangalore.)

M/s. J.P. Traders

No.7 & 8, 2nd Floor,
Ranganatha Market,
Jumma Masajid road,
Avenue Road Cross,
Bangalore – 560 002.

Appellant(s)

VERSUS

The Commissioner of Customs

BMTC Building,
Above BMTC Bus Stand, Domlur,
Bangalore – 560 071.

Respondent(s)

WITH

Customs Appeal No. 20256 of 2018

(Arising out of Order of Prohibition No. C. No. VIII/13/4(76)/84 City
Cus. Tech. dated 16.03.2016 passed by the Principal Commissioner
of Customs, Bangalore.)

M/s. Cargomar

No.36-37, AVP Plaza,
Peddanna Reddy Layout,
Horamavu Outer Ring Road Junction,
Banaswadi,
Bengaluru – 560 043.

Appellant(s)

VERSUS

The Commissioner of Customs

Central Revenue Building,
P.B. Building, Queens Road,
Bengaluru – 560 001.

Respondent(s)

AND

Customs Appeal No. 20268 of 2018

(Arising out of Order-in-Appeal No. 932 – 933/2017 dated 26.10.2017 passed by the Commissioner of Customs (Appeals), Bangalore.)

M/s. Cargomar

No.36-37, AVP Plaza,
Peddanna Reddy Layout,
Horamavu Outer Ring Road Junction,
Banashwadi,
Bengaluru – 560 043.

Appellant(s)

VERSUS

The Commissioner of Customs

Central Revenue Building,
P.B. Building, Queens Road,
Bengaluru – 560 001.

Respondent(s)

APPEARANCE:

Shri Rajesh Chander Kumar Rohra, Sr. Advocate for the M/s. JP Traders; and
Shri Ananth Narayan, Consultant for M/s. Cargomar, Customs Broker.
Shri Sanjay Venkat, Superintendent (AR) for the Respondent.

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER
(TECHNICAL)

FINAL ORDER NO. 20758 - 20760 /2025

DATE OF HEARING: 13.01.2025

DATE OF DECISION: 04.06.2025

PER: R. BHAGYA DEVI

These appeals are filed by the appellants M/s. J. P. Traders, Bangalore and by M/s. Cargomar, Customs Broker against Order-in-Appeal Nos. 932-933/2017 dated 26.10.2017.

2. The appellant M/s. J. P. Traders filed 2 Bills of Entry 7413708 dated 18.11.2014 and 7414488 dated 18.11.2014 wherein they imported products described as 'Architectural

Gypsum Moulding products HKH C234' and 'Architectural Gypsum Moulding products HKH C235' and classified the same under Customs Tariff Heading (CTH) 2520 2090 claiming exemption under Notification No.12/2012 (Sl. No.108) dated 17.03.2012. The Bills of Entry were RMS facilitated but before clearance, the goods were examined and on examination, it was found that the goods are fully manufactured products for decorative use and they were found to be crown, cornice corners, frames, mouldings, etc., for decorative purposes manufactured out of gypsum by using glass fiber reinforced technology. The product catalogue indicated that that these products can be painted with any type of paint and are suitable for use in new construction residential and commercial premises; hence, it was found to be rightly classifiable under CTH 6809 9000. Accordingly, the original authority reclassified the goods and denied the benefit of the exemption Notification and confirmed the demand of duty along with interest. The goods were also confiscated, and penalty was imposed under Section 114A and 114AA of the Customs Act, 1962 but dropped the penalty on the customs broker. The Commissioner (Appeals) in the impugned order upheld the order of the original authority and also imposed penalty under Section 112(a) and 114AA on the Customs Broker M/s. Cargomar based on the appeals filed by both the department and the appellant. Also, the Principal Commissioner vide order dated 16.03.2016 for the above misclassification prohibited the Customs Broker M/s. Cargomar from operating within the jurisdiction of Bengaluru Customs under the provisions of regulation 23 of CBLR 2013. Aggrieved by these orders, both the appellant M/s. J P Traders and the customs broker M/s. Cargomar are in appeal before us.

3. The Learned Sr. Counsel on behalf of the appellant M/s. J P Traders submitted that the seized goods were not made available to them, which is in violation of principles of natural

justice and relied on various decisions to substantiate the same. It is also submitted that classification of the products as 'Articles of Plaster' under Chapter Heading 6809 1900 is not in order, since it is beyond the scope of the show-cause notice. He further stated that the boards are of pure gypsum and they are rightly classifiable under CTH 2520 2090 and reclassification by the Revenue is only based on assumptions. It was also stated that the demand is time barred since there is no *mala fide* intention as the appellant is ignorant of the laws and the procedures for classification and classified the said products only based on the directions of the Custom House Agent (CHA), hence, the wrong classification cannot be considered to be mis-declaration. Reliance is placed on the following case laws:

- **Uniworth Textiles Ltd. Vs. CCE, 2013 (288) ELT 161 (S.C.)**
- **Reliance Communications Infrastructure Ltd. Vs. CC, 2015 (320) ELT 306**

4. The Learned Consultant on behalf of M/s. Cargomar submitted that the original authority had categorically held that 'in the circumstances of the case, it cannot be held that the customs broker has abetted the duty evasion in the face of active misdeclarations by the importer. Hence, the customs broker is not liable for penalty'. Hence, the Commissioner (Appeals) imposition of penalty is devoid of merit and there is no financial benefit accrued to the customs broker by mis-declaring the products. With regard to the prohibition order, it is submitted that the order was issued without following the principles of natural justice. It is further submitted that the show-cause notice dated 11.12.2015 was issued to decide the classification issue and the order prohibiting the customs broker for misdeclaration is premature and bad in law. It is further stated the offence report dated 29.02.2016 was not served on him and without following the principles of natural justice, the order dated 16.03.2016 prohibiting him cannot be sustained.

5. The Learned Authorized Representative on behalf of the Revenue submitted that the appellant had earlier imported similar products and rightly classified them under Chapter Heading 6809 1900, but in the said Bills of Entry classified them under Chapter 2520 2090. From this, it is evident that knowing very well that the goods are rightly classifiable under CTH 6809 1900 mis-declared to avail the benefit of the Notification. The brochures shows that the goods are finished products of plaster and ready to use and does not require any further process of manufacture and they are to be placed on the ceiling with the help of aluminum strips to bind them at a place where they are fixed. Hence, the Commissioner (Appeals) was right in confirming the demand and imposing penalty since it was a clear case of mis-declaration with the intention to evade payment of duty.

6. Heard both sides. The impugned products are described as 'Architectural Gypsum Moulding products HKH C234 and Architectural Gypsum Moulding products HKH C235' and the corresponding tariff entries that are in dispute are CTH 2520 and CTH 6809. The relevant tariff entries are reproduced below:

Mineral Products

Chapter 25 Salt; sulphur; earths and stone; plastering materials, lime and cement

Notes:

1. Except where their context or Note 4 to this Chapter otherwise requires, the headings of this Chapter cover only products which are in the crude state or which have been washed (even with chemical substances eliminating the impurities without changing the structure of the product), crushed, ground, powdered, levigated, sifted, screened, concentrated by flotation, magnetic separation or other mechanical or physical processes (except crystallization), but not products that have been roasted,

calcined, obtained by mixing or subjected to processing beyond that mentioned in each heading. The products of this Chapter may contain an added anti-dusting agent, provided that such addition does not render the product particularly suitable for specific use rather than for general use.

2520 Gypsum; Anhydrite; Plasters (consisting of Calcined Gypsum or Calcium Sulphate) whether or not Coloured, with or without small quantities of Accelerators or Retarders

2520 10 - Gypsum; anhydrite :

2520 10 10 --- Natural

2520 10 20 --- Marine

2520 10 90 --- Other

2520 20 - Plasters:

2520 20 10 --- Calcined

2520 20 90 --- Other

As rightly observed by the revenue Chapter 25 as seen above covers various substances obtained naturally and are in crude state which are not subjected to any further processes.

Section XIII Articles of Stone, Plaster, Cement, Asbestos, Mica or Similar Materials; Ceramic Products; Glass and Glassware Chapter 68 Articles of stone, plaster, cement, asbestos, mica or similar materials.

6809 Articles of Plaster or of Compositions based on Plaster - Boards, sheets, panels, tiles and similar articles, not ornamented

6809 11 00 -- Faced or reinforced with paper or paperboard only

6809 19 00 -- Other

6809 90 00 - Other articles

6.1. As seen above, the items imported by the appellant clearly fall under Chapter 6809 as articles of plaster as the impugned products are described as Gypsum Plaster Moulding Products (Ceiling, Cornice, Medalliaon, Panels, Pillars, Frames, etc.) and

the catalogue of the supplier also describe them as architectural and decorative plaster moulding products.

6.2. The Revenue has also placed on record Bills of Entry dated 17.12.2013 much prior to the impugned imports to show that the similar products which are described as 'Architectural Gypsum Moulding Products HKH C975, HKH C446, HKH C949, HKH C449 etc., were classified by the appellant under CTH 6809 9000. It is also a fact that the classification was mis-declared only to avail the benefit of Notification No.12/2012 which was otherwise not available to the products classifiable under CTH 6809. Therefore, it is a clear case of suppression and misdeclaration since the appellant had now classified the products under CTH 2520 knowing very well that they are rightly classifiable under 6809.

6.3. The claim of the appellant that the orders are beyond the scope of the show-cause notice is also mis-placed since the original authority has classified them under 6809 1900 which has been upheld by the Commissioner (Appeals), hence the classification of the impugned products is upheld under CTH 6809 and the demand of differential duty is also upheld along with interest and penalty under Section 114A. However, the penalty under Section 114AA is set aside in view of the fact that equivalent amount of penalty has already been imposed under Section 114A.

6.4. The original authority had observed that there is no evidence in the nature of e-mail or any other correspondence to prove the fact that it was the CHA (Cargomar) who had directed/advised the appellant to mis-declare the classification of the impugned products and moreover, the benefit of the Notification based on mis-declaration is to accrue to the importer and not to the CHA. The Commissioner (Appeals) in the impugned order has not brought on record anything to show that

the CHA was the person responsible for mis-declaring the products. In view of the above we do not find any reason to impose penalty on the CHA. Since, we find that the customs broker had no role to play in mis-declaring the product the question of prohibiting him from operating within the jurisdiction of Bengaluru Customs under Regulation 23 of CBLR 2013 does not arise.

7. In view of the above discussions, the impugned order Order-in-Appeal No. 932-933/2017 is confirmed only to the extent of confirming the demand of duty along with interest on the appellant M/s. J P Traders and imposition of penalty under Section 114A but setting aside the penalty under Section 114AA. Appeal No. C/20016/2018 is disposed of in the above terms. Appeal No. C/20268/2018 & C/20256/2018 are allowed.

(Order pronounced in Open Court on 04.06.2025.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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