

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

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 21103 of 2018

(Arising out of Order-in-Appeal No. 187-189/2018 dated 16.04.2018
passed by the Commissioner of Customs (Appeals), Bangalore.)

M/s. Mersen India Pvt. Ltd.,
Plot No. 5 Bommasandra Industrial Area,
Bangalore – 560 099.

Appellant(s)

VERSUS

**The Commissioner of
Customs,**
Bengaluru City Customs,
Queens Road,
Bengaluru – 560 001.

Respondent(s)

With

Customs Appeal No. 21001 of 2018

(Arising out of Order-in-Appeal No. 187-189/2018 dated 16.04.2018
passed by the Commissioner of Customs (Appeals), Bangalore.)

**Mr. Sathish Sivaraman,
Ex-Chief Financial Officer,
M/s. Mersen India Pvt. Ltd.,**
Plot No. 5 Bommasandra Industrial
Area,
Bangalore – 560 099.

Appellant(s)

VERSUS

**The Commissioner of
Customs,**
Bengaluru City Customs,
Queens Road,
Bengaluru – 560 001.

Respondent(s)

AND

Customs Appeal No. 21856 of 2018

(Arising out of Order-in-Appeal No. 348/2018 dated 23.10.2018
passed by the Commissioner of Customs (Appeals), Bangalore.)

M/s. Mersen India Pvt. Ltd.,
Plot No. 5 Bommasandra Industrial Area,
Bangalore – 560 099.

Appellant(s)

VERSUS

The Commissioner of Customs,
Bengaluru City Customs,
Queens Road,
Bengaluru – 560 001.

Respondent(s)

APPEARANCE:

Mr. Hari Radhakrishnan, Advocate for the Appellant

Mr. K.A. Jathin, Deputy Commissioner (AR) for the Respondent

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR PULLELA NAGESWARA RAO,
MEMBER (TECHNICAL)

Final Order No. 20995 - 20997 /2025

DATE OF HEARING: 03.02.2025

DATE OF DECISION: 15.07.2025

PER : DR. D.M. MISRA

These three appeals are filed against respective Orders-in-passed by the Commissioner of Customs (Appeals), Bangalore. Since common issues involved, these appeals are taken up together for hearing and disposal.

2. Briefly stated the facts of the case are that the appellant had imported Graphite blocks and filed Bill of Entry No.6113200 dated 15.07.2014 classifying the goods under CTH 69031010 and claimed concessional rate of duty. The said Bill of Entry was facilitated under RMS by report dated 18.07.2014 of the Superintendent (Import Shed) that the Graphite blocks required to be classified under CTH 3801, the case was referred to Special Intelligence & Investigation Branch (SIIB). During the course of scrutiny of the import documents, it was observed that the import was made from their group company M/s. Mersen Chongqing Co. Ltd., China against invoice No.402931 dated 09.06.2014 and in the Country of Origin Certificate dated

11.06.2014, the classification was indicated as CTH 3801. Thereafter, a detailed investigation was initiated and on completion of the investigation, a show-cause notice was issued on 15.12.2014 alleging mis-classification of the imported goods under CTH 69031010, whereas the correct classification of the goods imported should be under CTH 38011000; differential duty of Rs.38,08,278/- was demanded for the period from 26.06.2012 to 08.07.2014 along with interest and penalty. On adjudication, the imported goods for the relevant period has been reclassified under CTH 38011000 and differential duty of Rs.38,08,728/- was confirmed along with interest and penalty equivalent to duty under Section 114A, penalty of Rs.2.00 lakhs under Section 112 and penalty of Rs.5.00 lakhs under Section 114AA of the Customs Act, 1962; also goods seized have been directed to be confiscated with an option to redeem the same on payment of fine of Rs.3.00 lakhs; penalty of Rs.4.00 lakhs was imposed on Shri Sathish Sivaraman, Chief Financial Officer under Section 112 of the Customs Act, 1962. Aggrieved by the said order, appeals were filed before the learned Commissioner(Appeals), who in turn, upheld the orders of the adjudicating authority and rejected the appeals. The appellant had also imported goods through Air Cargo Complex, Bangalore. A show-cause notice was issued to them for recovery of differential duty classifying their product under CTH 69031010 against clearances made during the period August 2012 to September 2015 amounting to Rs. 2,15,057/- with interest and penalty which was later confirmed on adjudication and on appeal, upheld by the Commissioner(Appeals). Hence, the present appeals.

3.1. At the outset, the learned advocate for the appellant has submitted that they have been regularly importing Graphite blocks to machine parts used for high temperature / refractory applications in various manufacturing industries like float glass, fibre glass, optic fibre, furnace parts, continuous casting dies,

crucibles etc. The learned advocate assailing the impugned order has submitted that the learned Commissioner(Appeals) has passed the order without considering the submissions advanced by them, thereby the principles of natural justice has been violated; hence the order is bad in law. He has submitted that the imported Artificial Graphite blocks and insulating materials are critical for high temperature and refractory applications in various industries. These Graphite blocks possess specific properties such as high density, low grain size, low resistivity etc. and unique ability to withstand high temperatures. He has submitted that under Note (B) of Chapter 69 of the HSN covers refractory goods designed to withstand high temperatures and explicitly includes Graphite products under CTH 6902. The imported Graphite blocks intended for such purposes as mentioned therein ought to be classified under CTH 69029020 which includes Graphite bricks and shapes.

3.2. It is argued that the learned Commissioner(Appeals) has misinterpreted the claim of the appellant that Graphite blocks qualify as refractory goods and these are not ceramic products; however, Graphite is classified as ceramic because it is non-metallic and inorganic. Referring to Note 1 of Chapter 69, he has submitted that ceramic products apply to products obtained by firing inorganic non-metallic materials. The imported Graphite blocks are directly used in high-temperature applications and are not merely raw materials, undermining the classification under CTH 3801. Further, he has submitted that the learned Commissioner(Appeals) failed to appreciate the HSN notes that Chapter 38 excludes refractory goods especially those based on artificial graphite. The appellant in their submissions emphasised that imported graphite blocks were surface-finished and designed for high-temperature applications over 1500° C which clearly fall under CTH 69029020. In support, he referred to the Advance Ruling of CAAR, Mumbai wherein it is observed

that Raw Silicon Carbide Bricks are classified under CTH 6902 2040. Further, referring to Rule 1 of the General Rules of Interpretation, he has submitted that the classification is determined by the specific terms of the headings and sub-headings. The imported goods specifically fall under the description of 'refractory goods' in Chapter 69 providing a more accurate classification than the general term 'artificial graphite' under CTH 3801. Rule 3(a) provides that specific description takes precedence over a general one. Further, he has submitted that there is no estoppel in law particularly in classification matters which has been ignored by the authorities below. Also, he has submitted that the classification cannot be based on the Country of Origin Certificate; hence, reliance placed by the authorities to classify the product under CTH 3801 is arbitrary and devoid of reasoning. In support, he has referred to the judgment in the case of Sharp India Ltd. Vs. CC(Imports), Nhava Sheva, Raigad [2019(366) ELT 153 (Tri. Bom.)]. Further, he has submitted that omission of 'artificial' from the product description cannot be considered as misdeclaration. Further, he has submitted that the classification of similar Graphite blocks has been accepted under CTH 6903.

3.3. The learned advocate has also submitted that the demand is barred by limitation as the appellant did not suppress any facts and the description of the goods was accurate and since it is an issue of classification involving interpretation, extended period of limitation cannot be applied to the present case. In support, they referred to the judgment of the Hon'ble Supreme Court in the case of Northern Plastics Ltd. Vs. CC&CE [1998(101) ELT 549 (SC)]. Further, he has submitted that extended period of limitation cannot be invoked since the Department has raised a query concerning the import of identical goods against Bill of Entry No.4207597 dated 28.12.2013. On receiving the clarification, clearance of the goods was permitted. Therefore,

demand invoking extended period of limitation beyond two years is liable to be dropped. Further, he has submitted that when the goods are not available for confiscation, the imposition of redemption fine cannot be imposed. In support, they have referred to the judgment in the case of CC Vs. Fineness Creations [2009(248) ELT 122 (Bom.)] which has been maintained by the Hon'ble Supreme Court referred as 2010(255) ELT A120(SC). Further, they have submitted that imposition of penalty in the present case is unwarranted as the issue relates to interpretation of relevant entries of the Tariff Act on the classification of the imported goods.

4. Learned AR for the Revenue reiterated the findings of the learned Commissioner(Appeals). Referring to Chapter 69, the learned AR has submitted that the said chapter applies only to 'ceramic products' which has been fired after shaping. In the present case, the imported goods are artificial Graphite (Graphite blocks); hence do not fall under the scope of the Chapter Note 1 of the Chapter 69; therefore, the classification as ordered by the authorities below under CTH 3801 is correct. Also, the appellant had misdeclared the goods despite being warned by the Customs broker that the correct classification of artificial Graphite was under CTH 3801 but they misdeclared it under CTH 6903; therefore, invocation of extended period of limitation is justified. Also, since the goods were seized and later released provisionally, its confiscation and imposition of fine is justified.

5. Heard both sides and perused the records.

6. The issues involved in the present appeals are, whether the imported Graphite blocks be classifiable under CTH 69031010 / 69029020 as claimed by the appellant or under CTH

38019000 as confirmed by the authorities; extended period of limitation is invocable.

7. The undisputed facts of the case are that the appellant had initially classified the imported Graphite blocks under CTH 38019000 but changed its classification to 69031010 in the year 2012 and later during the course of proceeding before the authorities below claimed its classification under CTH 69029020. Before the Tribunal, the appellant claimed the classification of the goods under CTH 69029020. Therefore, the competing classification for determination is between CTH 38019000 and CTH 69029020.

The relevant tariff entries are reproduced as below:-

Tariff Item	Description of goods	Unit	Rate of duty	
			Stan dard	Prefer ential Areas
(1)	(2)	(3)	(4)	(5)
3801	Artificial graphite; colloidal or semi-colloidal graphite; preparations based on graphite or other carbon in the form of pastes, blocks, plates or other semi-manufactures			
3801 10 00	- Artificial graphite.....	Kg.	10%	10%
3801 20 00	- Colloidal or semi-colloidal graphite.....	Kg.	10%	-
3801 30 00	- Carbonaceous pastes for electrodes and similar pastes for furnace linings	Kg.	10%	-
3801 90 00	- Other	Kg.	10%	-

Also the HSN notes reads as follows:-

HSN Notes of Chapter 3801

(1) Artificial graphite (electro-graphite) is a variety of carbon, usually prepared in an electric furnace by heating a mixture of finely ground coke (normally petroleum coke, but sometimes anthracite coke, retort coke, pitch coke, etc.) and carbonaceous binders (e.g., pitch or tar), to a sufficiently high temperature (2500 to 3200 °C) to ensure its “graphitisation” under the catalytic action of substances present in the mixture (e.g., silica or iron oxide). The mixture is first extruded or moulded under pressure into "green" blocks of square or circular cross-section; these blocks may either be pre-fired (baked) at about 1000 °C and then graphitised, or they may be submitted directly to the graphitisation process.

... ..
... ..

- The heading does not cover:
- (a) Natural graphite (**heading 25.04**).
 - (b) Retort carbon (or gas carbon), sometimes incorrectly called “artificial graphite” (**heading 27.04**).
 - (c) Artificial graphite surface-worked, surface-finished, cut to special shapes, lathe-worked, drilled, milled, etc., or transformed into articles. (If of a kind used for non-electrical purposes these usually fall in **heading 68.15** (e.g., filters, discs, bearings, moulds, acid-resistant bricks, etc.); those of a kind used for electrical purposes fall in **heading 85.45**)
 - (d) Refractory goods, fired as ceramics, with a basis of artificial graphite (**heading 69.02 or 69.03**).
 - (e) Blocks, plates, bars and similar semi-manufactures, of artificial graphite which also contain powders of silver (**heading 71.06**)

Chapter 6902 is extracted below:-

Tariff Item	Description of goods	Unit	Rate of duty	
			Stan dard	Prefe renti al Area s
(1)	(2)	(3)	(4)	(5)
6902	Refractory bricks, blocks, tiles and similar refractory ceramic constructional goods, other than those of siliceous fossil meals or similar siliceous earths.			
6902 10	- Containing by weight, singly or together, more than 50% of the elements Mg, Ca or Cr, expressed as MgO, CaO or Cr2O3:			
6902 10 10	--- Magnesite bricks and shapes.....	mt	10%	-
6902 10 20	--- Chrome magnesite bricks.....	mt	10%	-
6902 10 30	--- Magnesite chrome bricks and shapes.....	mt	10%	-
6902 10 40	--- Magnesite carbon bricks and shapes.....	mt	10%	-
6902 10 50	--- Direct bonded basic bricks and shapes.....	mt	10%	-
6902 10 90	--- Other.....	mt	10%	-
6902 20	--- Containing by weight more than 50% of alumina (Al2O3), of silica (SiO2) or of a mixture or compound of these products:			
6902 20 10	--- Silica bricks and shapes.....	mt	10%	-
6902 20 20	--- High alumina bricks and shapes.....	mt	10%	-
6902 20 30	--- Alumina carbon bricks and shapes.....	mt	10%	-
6902 20 40	--- Silicon Carbide bricks and shapes.....	mt	10%	-
6902 20 50	--- Mullite bricks.....	mt	10%	-
6902 20 90	--- Other.....	mt	10%	-
6902 90	- Other :			
6902 90 10	--- Fire clay bricks and shapes.....	mt	10%	-
6902 90 20	-- Graphite bricks and shapes.....	mt	10%	-
6902 90 30	- Vermiculite insulation bricks.....	mt	10%	-
6902 90 40	--- Clay graphite stopper heads.....	mt	10%	-
6902 90 90	--- Other.....	mt	10%	-

The relevant HSN notes reads as:-

HSN Notes of Chapter 6902

This sub-Chapter covers, whether or not they contain clay:

(B) **In headings 69.02 and 69.03 refractory goods**, i.e., fired articles having the special property of resisting high temperatures as met in metallurgy, the glass industry, etc. (e.g., of the order of 1,500 °C and higher). According to the particular uses for which they are intended, refractory articles may also need to withstand rapid changes of temperature, be either good thermal insulators or conductors, have a low coefficient of thermal expansion, be porous or dense, resist the corrosive effects of products with which they come into contact, have a good mechanical strength and resistance to wear, etc.

However, to fall in heading 69.02 or 69.03 as refractory goods, articles must not only be **capable** of resisting high temperatures, they must also be **designed** for high temperature work. Heading 69.03 would therefore include crucibles of sintered alumina, but textile machine thread guides of the same material would fall in heading 69.09 since they are designed for clearly non-refractory uses.

8. In their technical write up, the appellant has claimed that the imported Graphite blocks are in the shape of rounds, square / rectangle blocks of different sizes. These blocks are for refractory applications as it can withstand very high temperature and it does not loose shape, structural properties and remains stable at high temperature. It has extensive use in various glass industries, furnaces etc. In his statement dated 28.07.2014, Shri Sathish Sivaraman, Chief Financial Officer explaining the manufacturing facility in their factory informed that the imported Isostatic Graphite blocks and insulating material to machine parts are used for high temperature / refractory applications in industries like float glass, fibre glass, optic fibre, furnace parts, continuous casting dies, crucibles. The manufacturing process involves cutting and shaping of the blocks using conventional machining including CNC milling. Their major products include parts for vacuum furnaces for heat treatment, continuous casting dies, applicator rollers etc. and their major customers include M/s. Indo US Mimtec, M/s. Lakshmi Vaccum Technologies etc. They machine and supply the spare parts as per the requirement of the customers as mentioned in the purchase order. Further, explaining the process of manufacture of imported Graphite

blocks, he has stated that its basic raw material are petroleum pitch and coal tar which is manufactured after milling, screening, blending, crushing again milling, screening, pressing, baking and graphitising the above raw materials; so, the Graphite blocks imported are artificial Graphite.

9. From the technical write up and statement of Shri Sathish Sivaraman, it is clear that the artificial Graphite blocks are manufactured from finely ground coke and carbonaceous binders (e.g. pitch or tar) as explained in the HSN notes for Chapter 3801 and the same artificial Graphite imported are in the shape of blocks and used after cutting and high finishing machine as per the specification of the customers.

10. The Revenue's contention is that the claim of the appellant that the said Graphite blocks would fall under the scope of ceramic products under Chapter 69 cannot be accepted as Chapter Note 1 of the said Chapter makes it clear that it applies only to 'ceramic products which have been fired after shaping'. Tariff heading 6902 covers refractory bricks, blocks, tiles and similar refractory ceramic constructional goods other than those of siliceous fossil meals or similar siliceous earths. The importers claimed that Graphite blocks are classifiable as Graphite bricks and shapes which the Department disputed as the Graphite blocks imported by the appellant are artificial Graphite blocks only which are subjected to further processing by machining etc. depending on the specifications ordered by the customers for high temperature resistance blocks and the same are not fired. Therefore, the authorities below have concluded that the goods imported are artificial Graphite of different grades in blocks and are in the nature of refractory products like bricks, used as lining in furnaces for resistance of high temperature. Even though the Graphite blocks do have the characteristics of high temperature resistance, but it is not in the nature of

ceramic products used in the furnaces in the form they were imported. Further, we find that the appellant had never claimed that the Graphite blocks are sold as such by them to the customers, who could use the same in heat resistance applications as ceramic products. On the contrary, the imported Graphite blocks are necessarily to be processed in their factory which could be used in certain high temperature application industries like glass industries, furnaces etc. It is the claim of the appellant that the Graphite blocks are the raw materials for the manufacture of goods, which include refractory products; hence it is out of the purview of Chapter 3801. The said argument is fallacious in the sense that the condition in which the goods were imported are relevant for its classification and not what it would be after subjecting to various processes in the importer's factory.

The imported goods are thus artificial Graphite in blocks and not in the form of 'ceramic products' which could be used as refractory material directly. Therefore, the Graphite blocks imported by the appellant are rightly classifiable under CTH 38019000.

11. On the issue of invocation of extended period of limitation, we find that the appellant had initially declared classification of Graphite blocks under the heading 38019000 but abruptly later changed to 69031010 viz. Magnesia carbon bricks, shapes and graphitised alumina, even though their Customs Broker had warned such classification would invite evasion of customs duty but the appellant had intentionally ignored the same suggestion of the Customs Broker only with an objective to evade payment of duty; therefore invocation of extended period of limitation for recovery of duty relating to appeal No.21103/2018, in our view, is sustainable.

12. As far as the appeal No.C/21856/2018 is concerned, the show-cause notice was issued subsequently on 07.10.2016 more or less on similar facts by Air Cargo Complex, Bangalore invoking extended period of limitation when already a show-cause notice was issued to them on the same classification dispute on 15.12.2014 after necessary investigation and recording of the statements of various persons by the SIIB of Customs ICD, Whitefield, Bangalore. Therefore, invocation of extended period of limitation cannot be sustained and the demand be restricted to the normal period only.

13. As far as the imposition of penalty on Shri Sathish Sivaraman is concerned, we find that knowing fully well that the product attracts classification under CTH 38019000 and there is specific advice by the Customs Broker, he proceeded to resort to mis-declaration of the product; hence, imposition of penalty on him is justified. However, in the circumstances of the case, the penalty imposed on him under Section 114AA of the Customs Act, 1962 is reduced to Rs.50,000/- and penalty under Section 112 of Customs Act, 1962 is set aside.

14. Appeals are disposed accordingly.

(Order pronounced in Open Court on 15.07.2025)

(D.M. MISRA)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

Raja...