CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

E/1006 - 1010/2009-DB

[Arising out of Order-in-Original No. 6, 7, 8, 9 & 10/2009 dated 30/08/2009 passed by the Commissioner of Central Excise & Customs, Cochin.]

The Commissioner of Central Excise,
C R BUILDING,
I S PRESS ROAD, ERNAKULAM,
COCHIN – 682 018.
KERALA

Appellant(s)

Versus

M/s. Indian Rare Earths Ltd.
Rare Earths Division, Udyogamandal PO,
Cochin – 683 501.
Kerala

Respondent(s)

Appearance:

Mr. Madhrupsaran, AR

For the Appellant

Mr. Kuriyan Thomas, Advocate
MENON & PAI ADVOCATES
P.B. No.1911, I.S. Press Road,
ERNAKULAM, COCHIN.

For the Respondent

Date of Hearing: 29/08/2018
Date of Decision: 31/08/2018

CORAM:

HON'BLE SHRI S.S GARG, JUDICIAL MEMBER
HON'BLE SHRI P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 21239 - 21243 /2018

ORDER PER: P. ANJANI KUMAR,

These are departmental appeals.

2. The respondents, M/s. Indian Rare Earths Ltd., are engaged in the manufacture of compounds of organic and inorganic rate earths falling under Chapter Heading 2846, Trisodium phosphate falling under Chapter Heading 2835, Nuclear Grade Ammonium Di-uranate and Nuclear grade Thorium Oxide classified under Tariff Sub-Heading No.2845.9010 of Central Excise Tariff Act, 1985.

2.1 The Department contended that Nuclear Grade Ammonium Di-uranate (NGADU) is only a natural uranium from natural source; it was wrongly classified under CET 2845 9010 as 'nuclear fuels not elsewhere included or specified' to BARC, Trombay; Central Excise Tariff Act, 1985, provided for specific heading for natural uranium and its compounds under 2844.1000 chargeable to rate of duty of 16% *ad valorem*; the HSN also vide Note IV (B)(I)(d) under Chapter Heading 28.44 classifies the Uranates viz., Na_2U207 and $(NH_4)2U207$ under Heading 2844; further, in terms of HSN, Uranium Isotope U235 is present in Natural Uranium in the proportion of 0.71%. Therefore, the

Department has issued the following show-cause notices covering different periods seeking to classify NGADU under Chapter Heading 2844.1000 and for demanding duty along with interest.

Appeal No.	SCN	Period	Duty + Cesses
E/1006/2009	No.46/2006 dt.2.11.2006	10/2005 to 07/2006	Rs.5,01,50,184
E/1007/2009	No.29/2007 dt.18.6.2007	08/2006 to 03/2007	Rs.4,31,97,171
E/1008/2009	No.26/2008 dt.30.04.2008	04/2007 to 09/2007	Rs.1,56,26,995
E/1009/2009	No.48/2008 dt.28.7.2008	10/2007 to 03/2008	Rs.4,10,13,354
E/1010/2009	No.16/2009 dt.19.3.2009	04/200/ to 12/2008	Rs.4,72,63,407

The above cited show-cause notices were dropped by Commissioner vide common Order-in-Original No. 6,7,8,9 & 10/2009 dt.31.8.2009.

3. The Department is in appeal against the impugned order on the grounds that for the period from 10/2005 to 12/2008, the respondent had classified NGADU under Central Excise Tariff Subheading No.2845.9010 and cleared 98428 Kgs. of the product valued at Rs.125,40,30,768/- at 'Nil' rate of duty to BARC, Trombay reportedly for use as nuclear fuel by the Department of Atomic Energy at their nuclear reactors, for Government of India; five show-cause notices were issued to the respondent proposing to reclassify NGADU under CETH

No.2844.1000 and demanding duty on the same. The Commissioner of Central Excise, Cochin adjudicated the case and ordered to reclassify the NGADU manufactured and cleared by the respondent under Tariff Subheading No.2844.1000 and dropped the proposal to demand duty and interest on NGADU by extending the benefit of exemption Notification No.3/2005-CE dated 24.2.2005 as amended. On a plain reading of the Notification No.3/2005-CE dated 24.2.2005, it is seen that there is no specific entry granting exemption for NGADU or the specific tariff item No.2844.1000 in the Notification. Therefore, the Order-in-Original No.6/2009 as well as 7,8,9 & 10/2009 dated 25.8.2009 passed by the Commissioner of Central Excise and Customs, Cochin is not legal and proper.

3.1 The learned DR reiterated the grounds of appeal whereas the learned counsel for the respondents claimed that 'Nuclear Fuel' falling under Chapter 28 is exempted irrespective of subheading.

4. Heard both sides and perused the records. It is seen that the Ld. Commissioner has gone into the issue at length. We find that the Ld. Commissioner has recorded that the respondents

had huge stock of Thorium concentrate accumulated, which was converted to slurry and dissolved in Hydro Chloric Acid; the mixture is subjected to solvent extraction process for separating Uranium as Uranyl Chloride, which is further processed for removal of impurities and to convert to NGADU, the final product, cleared by the assessee-respondent from the factory was NGADU; the Ld. Commissioner has examined different headings under Chapter 28 of Central Excise Tariff Act and found that the show-cause notice sought to classify NGADU under subheading 2845; the subheading includes with its scope natural uranium and its compounds; the term natural uranium is not found either in Section Note or Chapter Note to Chapter 28.

4.1 The learned Commissioner has also gone through the HSN and recorded that:

> *"I find that in Note IV A (1) to Section VI-28.44 therein, the term Natural Uranium is explained thus, under the description:*
>
> *I. Natural Uranium*
>
> *Uranium in the natural state is composed of three isotopes: Uranium 238, which forms 99.28% of the total mass, Uranium 235 (0.71%) and a small quantity of Uranium 234 (0.006%). It can be considered as both fissile element (because of*

Uranium 235 content) and a fertile element (because of its Uranium 238 content)."

4.2 In the light of the description of the term 'Natural Uranium' as above, the Commissioner has found that NGADU manufactured and cleared by the assessee contains 30% moisture and 70% Uranium. From the records it is seen that Uranium contains 0.7% of Uranium 235 and balance is Uranium 238 isotopes. Therefore, it was evident that the composition of the items is in conformity with the description of Natural Uranium as given in HSN. Further, the Commissioner found that among the items listed under Note VIB to Heading 2844 in the HSN, the item is Di-Ammonium Uranate $(NH_4)2U207$ along with Di-Sodium Uranate (Na_2U207) finds a specific entry against the Sl. No.1(d) therein as a 'Compound of fissile and fertile chemical element or isotopes'. It is also noted that isotopes in HSN under Section VI-2844 that Uranium 235 and Uranium 238 are isotopes of the element Uranium.

4.3 Therefore, the Commissioner concluded that NGADU manufactured and cleared by the assessee is classifiable under Chapter Heading 2844.1000. The Commissioner further held that Chapter Heading 2845 having its scope isotopes other than those of Heading 2844 only. As the item correctly fits into the description under Tariff Heading 2844.1000 as compound of Natural Uranium, it cannot be held to fall within the scope of the Chapter Heading 2845. In terms of HSN, the Heading 2845 covers only non-radioactive isotopes and its inorganic or organic compounds. Chapter 2845 covers Heavy Water, Heavy Hydrogen or Deuterium; therefore, product cannot be held to fall under Chapter 2845. Therefore, the Commissioner had held that the product NGADU is eligible for exemption in terms of Notification No.3/2005 dated 24.2.2005.

5. We find that the learned Commissioner was right in holding that Chapter Heading No.2845 covers isotopes other than those of Heading 2844 compounds, inorganic or organic, all such isotopes whether or not chemically defined. Further sub-classification of those heading relates to Heavy Water and others. Therefore, in terms of the HSN as cited by the learned Commissioner, we find that the product is classifiable under Chapter 2844 as held by the Commissioner in terms of the Chapter Note and HSN. Moreover, we find that exemption Notification No.3/2005 dated 24.2.2005 at Sl. No.24 mentions ‘Nuclear Fuel’ falling under Chapter 28 irrespective of the subheading, it is eligible for nil rate of duty. The Department is

not disputing the certificate issued by BARC stating that the NGDAU supplied by the respondent is not 'Nuclear Fuel'. The Notification (supra) exempts all nuclear fuel falling under Chapter 28 irrespective of subheading. Therefore, the arguments of the Department on classification will have no bearing on the duty liability. The exercise is thus revenue neutral also. Therefore, we find that there is no need to interfere with the orders of the learned Commissioner.

6. In view of the above, all the appeals filed by the Revenue are rejected.

(Order was pronounced in Open Court on **31.08.2018.)**

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

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