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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/3309/2006 Date 25/06/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017

C.C.E. CHANDIGARH Appellant
Vs
M/S C.S.ZIRCON PRODUCTS PVT LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order** No.376/2008 **Excise** dated 24-6-08

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
M/S C.S.ZIRCON PRODUCTS PVT LTD.
TIRLOKPUR ROAD,KALA AMB,DISTT-SIRMOUR(HP)
2. Adv. / Consult SH. BIPIN GARG, ADV., B-1/1289-A, VASANT KUNJ, N. DELHI-70
3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. II
Excise Appeal No. 3309 of 2006

[Arising out of the Order-in-Appeal No. 619/CE/CHD/2006 dated 13/07/2006 passed by The Commissioner (Appeals), Central Excise, Chandigarh.]

For Approval and signature :
Hon'ble Shri S.S. Kang, Vice President
Hon'ble Shri Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:
3.	Whether their Lordships wish to see the fair copy of the order?	:
4.	Whether order is to be circulated to the Department Authorities?	:

CCE, Chandigarh — Appellant

Versus

M/s C.S. Zircon Products Pvt. Ltd. — Respondent

Appearance

Shri V. Choudhary, Authorized Representative (DR) – for the appellant.

Shri Bipin Garg, Advocate – for the respondent.

CORAM:**Hon'ble Shri S.S. Kang, Vice President**
Hon'ble Sh. Rakesh Kumar, Member (Technical)

DATE OF HEARING : 26/05/2008.
DATE OF DECISION: 26-6-08

FINAL Order No. 376/08-08 Dated :

Per. Rakesh Kumar :-

The respondents in their manufacturing unit at Tirlokpur Road, Kala Amb, Distt. Sirmour, Homachal Pradesh receive Zircon Sand from M/s Indian Rare Earths Limited and process the same to make "Zirconium Washed Dried Frit (ZDF)". Zircon Sand is fused with Sodium Hydroxide at 600°C temperature,as a result of which a fritty mass containing Sodium Zirconate and Sodium Silicate is formed. This is then leached with water and the resulting slurry contains Zirconium Hydroxide and other impunities as solid and Sodium Silicate and Sodium Hydroxide (regenerated) in Solution. This is filtered and dried and a crude Zirconium Hydroxide cake is obtained which is called "Zirconium Washed & Dried Dried Frit (ZDF). It contains about 60% Zirconium Oxide, 15% insoluble impurities and balance water. It is this product, which is cleared by the respondent to Nuclear Fuel Complex, Hyderabad, who process it further for extraction of Zirconium. According to the respondents, it is classifiable under Heading 26.15 as "Zirconium ore/ concentrates", while according to the Revenue, it is classifiable under heading 28.25 as "other metal oxides, hydroxides and peroxides".

2. Heard both the sides.

2.1 Appearing on behalf of the Revenue, Shri V. Choudhary, the learned Departmental Representative made the following submissions :-

(i) While Chapter 26 cover "ores and concentrates", Chapter 28 covers the processed goods and heading 28.25 of this chapter unambiguously covers "other metal oxides, Hydroxides and peroxides". Therefore, ZDF is correctly classifiable under heading 28.25.

(ii) For classification purposes, the chapter heading which is more specific to cover a particular goods must be preferred over the chapter heading referring to goods in a general way. The ZDF is more specifically covered by heading 26.25.

(iii) The observation of Commissioner (Appeals) that in order to quality for classification under chapter 28, an inorganic chemical must have purity of 99% or more, is without any basis, as there is no such provision in chapter notes for chapter 28. The respondents themselves were earlier classifying ZDF under heading 28.25, but subsequently for claiming area based exemption have suddenly changed their stand and have claimed classification under heading 26.15.

(iv) Since the Zircon Sand has been subjected to a chemical process which has changed the chemical structure of the basic compound, in view HSN explanatory note 1 to chapter 26, ZDF goes out of the purview of this chapter and, can not be classified as 'Ore Concentrate'. The product being Zircon Hydroxide, even if crude, would be correctly classifiable under heading 28.25.

2.2 Shri Bipin Garg, Advocate, the learned counsel for the respondents made the following submissions :-

(i) The process involved in this case is of concentrating the Zircon Ore by mainly removing the unwanted impurities such as silica from Zircon sand. The product ZDF, therefore, has been correctly classified by the Commissioner (Appeals) as 'Zircon Ore Concentrate' under heading 26.15.

(ii) In this case, Zircon Ore is roasted with Sodium Hydroxide and this process results in removal of certain impurities – mainly that of Silica. The resultant product ZDF is used for extraction of Zirconium. Therefore ZDF is nothing but Zirconium Ore Concentrate.

(iii) The product ZDF has only 60% Zirconium Oxide while the Zirconium Oxide classifiable under 28.25 must be more than 99% pure.

3. The respondents process 'Zircon Sand' and get ZDF, which as per the letter of the Nuclear Fuel Complex, Department of Atomic Energy, who is the buyer of this product, is crude Zirconium Hydroxide. Zirconium Hydroxide is hydrous Zirconium Oxide. The point of dispute is whether this product is Zirconium Ore Concentrate, falling under

heading 26.15 or is classifiable as 'Oxide/Hydroxide of Zirconium under 28.25.

3.1 After carefully considering the submissions of both the sides, we, for the reasons given below, are of the view that the product, in question, is correctly classifiable under heading 28.25.

(1) The starting material for the respondents is 'Zircon Sand', which consists of Zircon and Silica. Zircon is Zirconium Silicate, ~~has~~ having crystallice structure (Zircon – Wikipedia, the free encyclopedia). The Zirconium Silicate present in Zircon Sand, after the processes in the respondent's unit, is converted into crude Zirconium Hydroxide. Thus, the Zirconium Silicate present in the Zircon Sand has undergone a change in chemical composition and structure. As per HSN explanatory notes for Chapter 26 (page 213), -

"the processes for which products of headings 26.01 to 26.17 may have been submitted, include physical, physico – chemical or chemical operations, provided they are normal to the preparation of the ore for extraction of metal. With the exception of changes resulting from calcinations, roasting or firing, such operations must not alter the chemical composition of the basic compound which furnishes the desired metal".

In this case since the process of 'Fusion' is different from calcinations, roasting or firing and since the fusion of Zircon Sand containing Zirconium Silicate with caustic soda at 600°C and subsequent leading of the fritty mass with water results in conversion of Zirconium Silicate into Zirconium Hydroxide, a compound with different structure and chemical composition, the resultant product – 'Zirconium Hydroxide Cake' will go out of the purview of Chapter 26.

(2) Zirconium Hydroxide/Hydrous Zirconium Oxide being specifically covered by heading 28.25, would be correctly classifiable under this heading. Chapter 28, as per chapter note 1 (a) to this chapter, covers among other things, "separate chemically defined compounds, whether or not containing impurities". Zirconium Hydroxide being a separate chemically defined compound, would be covered by this heading, even if it contains some impurities.

(3) As per HSN explanatory notes to chapter 26 (page 214), "concentrates of ore obtained by treatments other than calcination or roasting, which alter the chemical composition a crystallographic structure of the basic ore are excluded from chapter 26 and are covered by chapter 28. Therefore even if ZDF, which is nothing but crude Zirconium Hydroxide cake, is treated as Zirconium concentrate, it will still be classifiable under Chapter 28.

(4) As per HSN explanatory notes of Heading 28.25 (page 279), while natural Zirconium Oxide called Baddaleyite is an ore of heading 26.15, artificial Zirconium Oxide, obtained from Zircon Ore is covered by heading 28.25.

(5) Since Chapter 26 & 28 of the 1st Schedule to the Central Excise Tariff Act, 1985 are fully aligned with the corresponding chapters of HSN, the HSN explanatory notes to Chapter 26 & 28 would be relevant for determining the scope of the Chapter headings Chapter 26 & 28 of the 1st Schedule Central Excise Tariff also.

4. In view of the above, the impugned order classifying ZDF under heading 26.15 as "Zirconium Ore/Concentrate" is not sustainable and the same is set aside. The Revenue's appeal is allowed.

(Pronounced in open court on 24.6.05)

(S.S. Kang)
Vice President

(Rakesh Kumar)
Member (Technical)

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