CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing: 26.10.2017
Date of Decision: 02.11.2017

Appeal No. E/1355/2011 EX (DB)
[Arising out of the Order-in-Appeal No. 28-29/2011(C.E. - COMMISSIONER dated 07/03/2011passed by The Commissioner of Central Excise-Jaipur-I]

Appeal No. E/50941/2015 EX (DB)
[Arising out of the Order-in-Appeal No. 133-SLM-CE-JRR-2014 dated 31/12/2014 passed by The Commissioner of Central Excise, CUSTOMS (Adjudication)-JAIPUR-I (Appeal)]

Appeal No. E/51420/2015 EX (DB)
[Arising out of the Order-in-Appeal No. 01-SLM-CE-JPR-2005 dated 07/01/2015 passed by The Commissioner of Central Excise-JAIPUR-I (Appeal)]

Sika India Pvt. Ltd. … Appellant

Vs.

CCE Jaipur … Respondent

Appearance:
Present Shri Amit Jain, Advocate for the appellant
Present Shri H.C. Saini, DR for the respondent

Coram: Hon'ble Justice Dr. Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order No. 57583-57585/2017

Per: V. Padmanabhan

1. These appeals are filed against the following Orders-in-Original and Orders-in-Appeal.

Impugned Orders	Order-in-Original No. 28-29/2011 (C.E.)-Commissioner dated 07.03.2011	Order-in-Appeal No. 01(SLM)CE/JPR/2015 dated 07.01.2015	Order-in-Appeal No. 133(SLM)CE/JPR/2014 dated 31.12.2014
Period of dispute	01.04.2004 to December 2008 & (ii) 01.01.2009 to 31.10.2009	01.11.2009 to 30.09.2010	01.10.2010 to 31.03.2011

2. The appellant is engaged in the manufacture of various construction chemicals and discharging Central Excise Duty on such goods in terms of Section 4 of the Central Excise Act. The goods manufactured by the appellant were classified by them under CETH 3816 as miscellaneous chemicals. The department was of the view that the classification under 3816 was incorrect and proceeded to reclassify the goods under CETH 3214. Accordingly, vide the impugned orders, total differential duty amounting to Rs 70,91,784/- was demanded along with interest and penalties. Aggrieved by the impugned orders, the present appeals have been filed and are disposed through this common order.
3. With the above background, we heard Shri Amit Jain, Ld. Counsel for the appellant as well as Shri H.C. Saini Ld. Representative of the department.
4. Summarizing the case for the appellant, Shri Amit Jain submitted as follows:
   A. The construction chemicals manufactured by the appellant are in the nature of cement grout, repair mortar, repair concrete, tile adhesives, water proofing compounding sealants for tiles, walls etc. Such goods are primarily used for industrial use by builders etc.
   B. He drew our attention to the product literature pertaining to the various products manufactured by the appellant and submitted that many of the products contained Silica sand. He further referred to "Encyclopedia of Chemical Technology" and emphasized the point that silica is commonly used as refractory material. He submitted that CETH 3816 covers refractory

cement, mortar, concretes and similar goods. Hence, he justified the appellant's classification of products under 3816.

C. He submitted that the department has classified the product under CETH 3214. This heading covers various types of Glaziers putty and other non-refractory surfacing preparations. This classification is totally inapplicable for the goods manufactured by the appellant.

D. He further submitted that the assessee has made an alternate plea that their goods may be classified under CETH 3824 which covers various types of prepared binders and other chemical products and preparations of allied industries. He also submitted that CETH 382440 covers prepared additives for cements, mortars or concrete and 382450 covers non-refractory mortar and concretes. He further argued that the adjudicating authority, in respect of most of the products have not examined the claim of the alternate classification under 3824 and no findings have been recorded in the impugned orders.

E. Shri Jain also submitted that if the products are classified in Chapter 38, there will be no assessment under section 4A on MRP basis and the differential duty will not arise.

F. Lastly, he submitted that the Ld. Commissioner (Appeals) , Goa vide his Order-in-Appeal No. GOA-EXCUS-000-APP-059-2017-18 dated 28.07.2017, in respect of the assessee's different unit has permitted classification of many of the products manufactured by the assessee under CETH 3824.

5. The Ld. DR justified the impugned order. It is his submission that the lower Authorities have considered the claim of the appellant for

alternate classification under 3824, but the same was not found to be appropriate and has been disallowed. He also referred to para 9 of the Order-in-Original and submitted that, once the goods are classified under CETH 3214, the goods are required to be assessed on MRP basis under Section 4A in respect of all clearances made through dealers. In respect of goods directly sold to industrial consumers, the impugned orders have already allowed the valuation under section 4.

6. Heard both sides and perused the record.

7. For ready reference we extract below the competing Central Excise Tariff Headings.

38610000	**Refactory cements, mortars, concretes and similar compositions, other than products of heading 3801**	**Kg**	**10%**

3824	**--Prepared binders for foundry moulds or cores; chemical products and preparations of chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included.**		
3824 10 00	--prepared binders for foundry moulds or cores.	Kg	10%
3824 30 00	--Non-agglomerated metal carbides, mortars or concretes:	Kg	10%
3824 40	--Prepared additives for cement, mortars or concretes:		
3824 40 10	--Damp proof or water proof compounds …	Kg	10%
3824 40 90	--Others…..	Kg	10%
3824 50	--Non-refractory mortars and concretes:		

3214	**Glaziers' putty, grafting putty, resin cements, caulking compounds and other mastics; painters' fillings; non-refractory surfacing preparations for facades, in-door walls, floors, ceilings or the like**		
3214 10 00	Glaziers' putty, grafting putty, resin cements, caulking compounds and	Kg	10%

	other mastics; painters' fillings		
3214 90	-Other :		
3214 90 10	non-refractorysurfacing preparations	Kg	10%
3214 90 20	Resin cement	Kg	10%
3214 90 90	--Other….	Kg	10%

8. We note that chapter 38 covers various types of miscellaneous chemical products. CETH 3816 as well as 3824 cover various types of cements, mortar and concretes. On the other hand chapter 32 covers various types of dyes, colours, paints and related substances. 3214 particularly covers goods such as putty, other mastics and other non refractory surfacing preparations. We have also perused the technical write up indicating the various ingredients contained in different products manufactured by the appellant. After considering the ingredients and the possible use of the goods manufactured, we are of the view that most of these products are not of a type used for surfacing preparations for walls ceilings etc. They also do not find use in the activity of painting. Thus rules out the classification under chapter 3214.
9. We note that silica sand is used in many of the products manufactured. After referring to the Chemical Technology Encyclopedia; we find that silica is commonly used as a raw material for making refractory coatings. We find that refractory cement, mortar, concretes etc., are classifiable under CETH 3816. However similar goods which have non-refractory applications are found under CETH 3824. The appellant, before the lower Authorities has agitated the alternation classification under 3824 for their products. On perusal of Order-in-Original, we find that such claim has been dealt with and denied only in respect of two or three products. In

respect of the other products this alternate claim has not been discussed at all.

10. We have also considered the Order-in-Appeal passed by Commissioner (Appeals) Goa in respect of a different unit of the assessee in which some of the products have been classified under 3824 and a few under 3214.

11. After careful consideration of the record of the case and submissions, we are of the view that the matter is required to be remanded to the Ld. Commissioner with a direction to carefully examine the alternate claim of the appellant for classification under CETH 3824 in respect of all the goods manufactured by the appellant. The views expressed in this order be kept in mind as also the classification indicated by the Commissioner (Appeals) Goa, while passing de novo orders. Additional evidence may be admitted as per law

12. In the result impugned order is set aside and matter remanded.

[Order Pronounced in the open court on_02/11/2017_]

(Justice Dr. Satish Chandra)
President

(V. Padmanabhan)
Member (Technical)

Rekha