CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench

Court – I

APPEAL No. C/573/2009

(Arising out of Order-in-Appeal No. 25/2009(V)CH, dated 03.07.2009 passed by CCCE&ST (Appeals), Visakhapatnam)

CCE & CC, Visakhapatnam .. APPELLANT

Vs.

MPR Refractories Limited .. RESPONDENT

Appearance

Shri N. Bhanu Kiran, Superintendent/AR for the Appellant.

None for the Respondent.

Coram:

Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)

Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 22.10.2018

Date of Decision: 22.10.2018

FINAL ORDER No. A/31379/2018

[Order per: Mr. M.V. Ravindran]

1. This appeal is filed by Revenue against Order-in-Appeal No. 25/2009(V)CH, dated 03.07.2009.

2. None appeared on behalf of the respondent despite notice. The respondent has been absent for the last two hearings. Accordingly, we take up the appeal for disposal as, it seems, respondent is not interested in defending the case.

3. The relevant facts that arise for consideration are the respondent herein had imported brown fused alumina vide Bills of Entry Nos. 349 and 350, dated 30.01.1997 which were assessed provisionally accepting the classification of the importer under Chapter Heading No. 2606.00. The samples of the goods imported were drawn and sent for analysis and based upon such test results, the provisionally assessed bills of entries were finalised, classifying the product under chapter heading 2818.20 at a higher rate of duty and differential duty demand was raised on the respondent. Aggrieved by such an order, respondent herein filed an appeal before the Commissioner (Appeals). The first appellate authority reclassified the product under chapter heading 2818.20. Aggrieved by such an order, an appeal was preferred to the Tribunal and the Tribunal considering the facts of the case, remanded the matter back to the first appellate authority for *denovo* decision. Following the direction of the Tribunal, the first appellate authority in the impugned order has come to the conclusion that the goods imported by the respondent are classifiable under chapter 26 and set aside the Order-in-Original.

4. Ld. DR submits that identical issue of the very same respondent has been decided by the Tribunal in the final order No. 498/2007, dated 30.04.2007 in appeal No. C/7/2005 (as reported at 2007(214)E.L.T. 342 (Tri.-Bang.). He would submit that the goods imported in that case and the case in hand are the same.

5. On careful consideration of the submissions made by Ld. DR and perusal of records, we find that the issue has been correctly put forth by Ld. DR as to whether classification of the goods imported by the respondent (brown fused alumina) would merit classification under chapter 28 or chapter 26.

6. We find that the issue is no more *res-integra* . The Tribunal, in the respondent's own case (as cited herein above) has clearly held that brown fused alumina fall under chapter 28. In our view, nothing more can be said in the case in hand, accordingly we hold that the impugned order is incorrect and liable to be set aside and we do so.

7. Impugned order is set aside and the goods imported by the respondent are classified under chapter 28 and the differential duty as demanded by the lower authorities is upheld alongwith interest.

8. Appeal stands disposed of as stated herein above.

(Operative portion of the order pronounced in open court on conclusion of hearing)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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