IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.1

Customs Appeal No.76136 to 76147 of 2015

(Arising out of Order-in-Original No.Kol/Cus/Port/AM/070/2015 dated 21.08.2015 passed by Commissioner of Customs (Appeals), Kolkata)

Commissioner of Customs (Port), Kolkata
15/1, Strand Road, Kolkata-700001

Appellant

VERSUS

M/s IFGL Refractories Limited
3, N.S.Road, Kolkata-700001

Respondent

APPERANCE :

Shri Manish Mohan, Authorized Representative for the Appellant
Shri Sourabh Bagaria, Advocate

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO…75480-75481/2023

DATE OF HEARING : 16 .05.2023
DATE OF DECISION : 16.05.2023

Per Ashok Jindal :

The revenue is in appeal against the impugned order wherein the ld.Commissioner held the classification of impugned goods under CTH 25233000 and also given the benefit of Notification No.21/2002-Cus dated 01.03.2002 Sl.No.448A and Notification No.12/2012-Cus dated 17.03.2012 Sl.No.115A.

2. The facts of the case are that the respondents filed various Bills of Entry for import of aluminous cement classifying the same under CTH 25233000 to claim the benefit of Notification No.21/2002-Cus dated 01.03.2002 Sl.No.448A and Notification No.12/2012-Cus dated 17.03.2012. After clearance of the goods, the DRI investigated the matter and on the basis of several statement of several trade and

industrial technical data, the DRI come to the conclusion that alumina content in the imported cement was 40% and above and therefore, the said goods were correctly classifiable as High Alumina Refractory Cement and the same are to be classified under CTH 25239020 and the said item is not entitled for the benefit of the above Notification. Therefore, show-cause notices were issued to the respondent to re-classifying the impugned goods under CTH 25239020 as High Alumina Refractory Cement. Consequently, demand of duty along with interest and to be attracted penal action. The matters were adjudicated. It was held that the imported goods are High Alumina Refractory Cement and the same are to be classified under CTH 25239020 and the benefit of Notification is not available to them. The said orders were challenged before the ld.Commissoner (Appeals), who held that the classification of the impugned goods as under CTH 25233000 and allowed the benefit of the cited Notification. Against the said order, the Revenue is in appeal before us.

3. Heard the parties and considered the submissions.

4. We find that the said issue has come up before this Tribunal in the case of Vesuvius India Ltd. Vs. Commissioner of Customs, Visakhapatnam reported in 2019 (370) ELT 1134 (Tri.-Hyd.) where the Tribunal has examined the issue and observed as under :

> "***3.*** *Heard both sides and perused the records. The Learned Counsel for the appellant submits that they have been importing aluminous cement and filed bills of entry along with all relevant documents. They claimed the classification of this product under Chapter Heading 2523.30 and have been doing so for a long time. From 2003-04, the tariff had undergone some change.*
>
> *The Tariff Heading up to 2002-03 was as follows :-*

25.23		*Portland cement, aluminous cement, slag cement, supersulphate cement and similar hydraulic cements whether or not coloured or in the form of clinkers.*	
2523.10	*--*	*Cement clinkers Portland cement*	*30%*
2523.21	*--*	*White cement, whether not artificially coloured*	*30%*
2523.29	*--*	*Other*	*30%*
2523.30	*--*	*Aluminous cement*	*30%*
2523.90	*--*	*Other hydraulic cements*	*30%*

From 2003-04, tariff heading has been modified as follows :

2523		*Portland cement, aluminous cement, slag cement, supersulphate cement and similar hydraulic cements whether or not coloured or in the form of clinkers.*	
2523 10 00	*--*	*Cement clinkers Portland cement*	*25%*
2523 21 00	*--*	*White cement, whether not artificially coloured*	*30%*
2523 29	*--*	*Other*	*30%*
2523 29 20	*--*	*Ordinary Portland cement coloured*	*30%*
2523 29 30	*--*	*Portland Pozzolana cement*	*30%*
2523 29 40	*--*	*Portland slag cement*	*30%*
2523 29 90	*--*	*Other*	*30%*
2523 30 00	*--*	*Aluminous cement*	*30%*
22523 90	*--*	*Other hydraulic cements*	
2523 90 10	*--*	*Sagol; ashmoh*	*30%*
2523 90 20	*--*	*High alumina refractory cement*	*30%*
2523 90 90	*-*	*Other*	*30%*

As may be seen from above, with effect from 2003-04, the heading "Other hydraulic cements" has been sub-divided into three categories including "high alumina refractory cement". He *submits that it is the case of the department that aluminous cement which they have imported and declared as such deserves to be classified as high alumina refractory cement since the alumina content in it is high (more than 50%). The period of dispute is 2006-2011. According to the department, since the cement is classifiable as high alumina refractory cement, the benefit of Notification No. 21/2002-Cus., dated 1-3-2002 (Sl. No. 448) and successive notifications was not available to them and therefore, the differential duty is liable to be recovered. He submits that in the first case, there is nothing on record to show that what they have imported is not aluminous cement. When the Tariff was modified in 2003-04, instead of dividing the aluminous cement into various grades, a special category of high alumina refractory cement has been created. It is undisputed that the alumina content in their cement was over 50%. He would assert that such high aluminium content is essential for manufacture of refractory bricks which are their final products. Low aluminous cement will not be suitable for manufacture of refractory bricks. On a specific query from the Bench, he explained that in their documents, the brand name of the products which they had imported has been indicated and they have claimed classification of aluminous cement as they have been doing for a long time. While the trade name suggests it is high aluminous cement, it may or may not be evident from the name itself. However, whenever they submitted the documents to the Customs along with bills of entry, the certificate of quality sent by their suppliers was also enclosed which clearly indicated the percentage of alumina content. He presented before us copies of some such certificates of quality. For instance a certificate of quality dated 30-5-2007 for the product "alumina cement SECAR71" shows that the Alumina* Al_2O_3 *content of the products was 69.4%. He would submit that in no case have they hidden the aluminium content of the cement or misdeclared it. However, they have claimed classification under Chapter Heading 2523.30 while the department seeks to classify it under 2523 90 20. He would further assert that the Notification No. 21/2002 as well as its successor notifications provided for exemption for aluminous cement used in manufacture of refractory products falling under Chapters 38, 68, or 69. The benefit is available if the aluminous cement which is imported falls under Chapter 25 of the Customs Tariff Act, 1975. He would submit that the successor notifications were also worded accordingly. Therefore, the benefit of exemption notification is available as long as (a) what they were using was aluminous cement; (b) it was used for manufacture of refractory products and (c) it fell under Chapter 25 of the Customs Tariff. It* *is not in dispute that they have been manufacturing refractory products. It is also not in dispute that what they are importing was aluminous cement/high aluminous cement and it falls under Chapter 25. Since the notifications do not specify any particular sub-heading, regardless of where, in the Chapter, the aluminous cement imported by them falls and regardless of what the content of alumina is, they are entitled to the benefit of exemption notification. Therefore, the entire demand has been raised without any merit. Consequently, the penalties also do not sustain.*

4. *Learned AR reiterates the impugned order and submits that the appellant has been importing high alumina refractory cement falling under Chapter Heading 2523.90 20 and have been misdeclaring it was aluminous cement classifying it under 2523.30 00 and wrongly availing the benefit of Notification No. 21/2002-Cus. (Sl. No. 448A), dated 1-3-2002. Representative samples of the imported material were drawn by the Customs Authorities on receipt of specific information under a Panchnama from live consignments as well as from stocks available in factories and factory and godowns of the importer which established that the alumina content in the cement is very high and therefore it deserves to be classified as high alumina refractory cement. The investigating officers recorded the statements of various persons. After investigations, the department concluded that the importer has misdeclared the nature of the cement imported by them in order to wrongly avail the benefit of ineligible exemption notification. Accordingly, the live consignments were seized and show cause notice was issued and after due process impugned order was passed confiscating the seized goods and imposing redemption fine as well as imposing penalties upon the importer and other two appellants in these cases. Differential duty was also demanded from the appellant on this ground. He asserts that but for the investigation conducted by the department, the fact that the importer had imported high alumina refractory cement and misdeclared it as alumina cement would not have come to light. Therefore the appeals do not have any merit and may be rejected.*

5. *We have considered the arguments of both sides and perused the records. It is not in dispute that the importer appellant has manufactured refractory bricks and that they imported aluminous cement for the purpose. It is also not in dispute that they have been classifying these products as aluminous cement under Chapter 25. It is also not in dispute that they have not changed their classification to high alumina refractory cement after the*

Tariff has been revised with effect from 2003-04. It is also not in dispute that the goods were declared by the trade name and necessary documents were produced along with bills of entry by the appellant. The documents which were produced at the time of assessment and presented before us during the current proceedings show that the certificate of quality was among the documents presented. These certificates of quality clearly indicate the alumina content. In all cases the alumina content is over 50%. The only point of allegation that can sustain in the present case is that the assessee has wrongly classified the imported goods in their bills of entry. The importer assessee is not an expert in classification of products and it is always possible that they claimed wrong classification. It is open for the department to direct the importer to correct classification or issue a show cause notice proposing revision of classification. Merely claiming the wrong classification by itself does not amount to misdeclaration of the goods and there is nothing on record to show that the description of the goods in the Bill of Entry and other documents as well as in the test report do not match. The department's case has to fail on this ground alone for the extended period of limitation and correspondingly the penalties also need to be set aside.

6. *The next question to be examined is, if the imported products is high alumina refractory cement classifiable under 2523 90 20, whether the exemption Notification No. 21/2002 is still available. A plain reading of the notification shows that the exemption is available for any high alumina cement falling under Chapter 25. It does not distinguish between high alumina cement and low alumina cement. If the intention of the notification was to confine it to aluminous cement falling under a specific heading of the Customs Tariff, it would have said so. From the documents produced before us, we have no doubt that what is imported was aluminous cement (with high alumina content). Therefore, there is no doubt in our mind that what was imported was aluminous cement for the purpose of manufacture of refractory bricks. Therefore, the exemption Notification No. 21/2002 is fully available to the appellant. Accordingly, the demand on this count even within the normal period of limitation does not sustain.*

7. *As we have found that there was no misdeclaration at all and the appellant is entitled for the exemption notification in any case and there is nothing to be gained by the appellant by classifying their product under one heading or the other, we find the* *confiscation of the goods and imposition of penalties are also not sustainable and need to be set aside and we do so."*

5. We find that in this case also, the respondent has imported Alumina Cement and filed Bills of Entry for their clearance claiming the classification under CTH 25233000.

6. We further find that the respondent has manufactured refractory bricks and for that, they have imported the impugned goods and this issue has been examined by this Tribunal in the case of Vesuvius India Ltd. (supra) and it was held that the correct classification of the impugned goods is under CTH-25233000 and the respondent is entitled the benefit of exemption Notification No.21/2002-Cus dated 01.03.2002 Sl.No.448A and subsequent Notification.

7. In view of this, we hold that the issue is no more *res integra* and the correct classification is under CTH-25233000 and the respondent is entitled to the benefit of exemption Notification No.21/2002-Cus dated 01.03.2002 Sl.No.448A and subsequent Notification.

8. Accordingly, we do not find any infirmity in the impugned order and the same is upheld.

9. The appeals filed by the Revenue are dismissed.

(Dictated and pronounced in the open court)

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(Rajeev Tandon)
Member (Technical)

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