IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

C/Stay Petition No.
77745,77747,77749,77751,77753,77755,77758,77760,77762,77764,77766,77768,77770,77772,77774,77776,77778,77780,77782,77788,77787,77790,77792,77794,77796,77798,77800/2018
And
C/MA (COD)-77746,77748,77750,77752,77754,77756,77759,77761,77763,77765,77767,77769,77771,77773,77775,77777,77779,77781,77783,77789,77791,77793,77795,77797,77799,77801/2018
and C/MA(COD)-77786/2018
And
Appeal Nos.
C/79502,79506,79507,79509,79511,79514,79515,79516,79518,79520,79522,79523,79525,79526,79528,79529,79530,79531,79533,79547-79553/2018 & C/79546/2018

Arising out of Order-in-Appeal Nos. KOL/CUS(PORT)/AA/1199-1225/2018 dated 03.07.2018 passed by the Commissioner of Customs (Appeals), Kolkata.

Commissioner of Customs (Port), Kolkata.
….Appellant (s)

Vs.

M/s Carbon Resources Pvt. Ltd.

…Respondent (s)

Appearance:
Shri S. Guha, A. C. (AR) for the Appellant (s)
Ms. Shreya Mundra, C. A. for the Respondent(s)

CORAM:
HON'BLE SHRI P. K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI V. PADMANABHAN, MEMBER (TECHNICAL)

Date of Hearing/Decision: - 31.01.2019

Order No…FO/A/75469-75495/2019 & MO/75648-75701/2019

Per Shri P. K. Choudhary:

Miscellaneous Applications have been filed by the appellant Department for condoning the delay in filing the appeal before the Tribunal.

2. The Ld. D. R. appearing on behalf of the appellant submits that the delay is unintentional and may be condoned. In view of the submission made by the Ld. D. R. and the reasons as explained in the miscellaneous applications, the delay in filing the appeal before the Tribunal is condoned. Miscellaneous Applications (COD) allowed.

3. The present appeals are filed against the Order-in-Appeal Nos. KOL/CUS (PORT)/AA/1199-1225/2018 dated 03.07.2018.

4. Briefly stated the facts of the case are that the respondent has imported gas and electrically calcined anthracite coal through the EDI system. The importer claimed classification under CTH 2701 11 00 attracting BCD @ 2.5% and CVD @ of 2%. It is the case of the department that the imported goods is a carbon additive, used in Steel and Casting Industry (not used as fuel) and classifiable under CTH 38249911, attracting BCD @ 7.5% and CVD @ 12.5%. The goods were reclassified under CTH 38249911 attracting higher rate of duty. The importer paid duty on the re-assessed Bill of Entry and got the goods cleared.

Being aggrieved, the Respondent-importer filed appeals before the Lower Appellate Authority.

The Commissioner (Appeals) vide the impugned order reclassified the subject imported goods under CTH 2701 11 00 by setting aside the impugned assessment of the subject Bills of Entry as detailed below:-

Sl. No.	Appeal File No.	B/E No. and date
1.	1178/16	7272940 dt. 28.10.16
2.	1179/16	7263936 dt. 20.10.16
3.	1180/16	7256312 dt. 27.10.16
4.	1189/16	7477413 dt. 16.11.16
5.	1190/16	7540470 dt. 21.11.16
6.	70/17	8048461 dt. 02.01.17
7.	71/17	7804676 dt. 13.12.16
8.	72/17	7804749 dt. 13.12.16
9.	73/17	7837818 dt. 15.12.16
10.	257/17	8129317 dt. 09.01.17
11.	258/17	8121252 dt. 09.01.17
12.	389/17	8782326 dt. 06.03.17
13.	390/17	8717083 dt. 28.02.17
14.	391/17	8702906 dt. 27.02.17
15.	392/17	8516020 dt. 11.02.17
16.	393/17	8701754 dt. 27.02.17
17.	410/17	8731286 dt. 01.03.17
18.	411/17	8958674 dt. 20.03.17
19.	412/17	8791276 dt. 06.03.17
20.	413/17	8782307 dt. 06.03.17
21.	414/17	8781232 dt. 06.03.17
22.	518/17	9331758 dt. 17.04.17
23.	519/17	9050567 dt. 27.03.17
24.	520/17	9227360 dt. 08.04.17
25.	645/17	9480269 dt. 27.04.17
26.	646/17	9496182 dt. 28.04.17

27.	646/18	5002832 dt. 30.01.18

The Department is in appeal before the Tribunal against the impugned Order-in-Appeal.

5. Heard both sides and perused the appeal records.

6. After hearing both the parties and on perusal of the case records, we find that the respondent has imported gas calcined anthracite coal and electrically calcined anthracite coal and claimed classification under CTH 2701 11 00 attracting BCD @ 5% and CVD @ 2%. However, the Department re-classified the said goods under CTH 38249911 wherein BCD @ 7.5% and CVD @ 12.5% is levied. The respondent thereafter, filed an appeal before the Commissioner of Customs (Appeal) wherein it has been held vide Order-in-Appeal No. F. Nos. S5-903, 1077-1080/CUS (APPG)/KOL (PORT)/2016 that electrically calcined anthracite coal and gas calcined anthracite coal are classifiable under CTH 2701 11 00 and does not merit classification under CTH 38249911 of the Customs Tariff Act, 1975.

7. It has been contended by the Department in their appeal that calcined coal is not anthracite coal in natural form but that has been subjected to the process of electrical/gas calcinations and that the calcined anthracite coal is not a fuel but a carbon additive.

8. It is the contention of the Respondent that the coal has undergone the process of calcinations does not alter the nature of the product as anthracite coal. The process of calcinations itself is a

common treatment process applied to many solid materials. It is commonly used in Metallurgy to concentrate ore and remove hydrates and carbonates.

9. We find that the issue is no more res-integra in view of the decision of the Tribunal in the identical case against the same importer on self same issue as reported in Commissioner of Customs (Port), Kolkata Vs. Carbon Resources Pvt. Ltd. 2018 (363) E.L.T. 442 (Tri.-Kolkata).

10. In view of the above decision we find no reason to interfere with the impugned order and the same is sustained. Appeals filed by the appellant are dismissed. Stay petitions get disposed off.

(Dictated and pronounced in the open court.)

(V. PADMANABHAN)
MEMBER (TECHNICAL)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Tushar Kr.