

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

REGIONAL BENCH – COURT NO.1

Customs Miscellaneous Application (COD) No.75782 of 2019
Stay Petition No.75781 of 2019
&
Customs Appeal No.76165 of 2019

(Arising out of Order-in-Appeal No.Kol/Cus/Port/AA/40/2019 dated 14.01.2019 passed by Commissioner of Customs (Appeals), Kolkata)

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

Appellant

VERSUS

M/s Carbon Resources Private Limited
(Narayani Niwas, New Barganda, Giridih-815301)

Respondent

APPEARANCE :

Shri A.K.Choudhary, Authorised Representative for the Appellant
Shri Shovit Betal, Advocate for the Respondent

CORAM:

HON'BLE MR.R.MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE MR.K. ANPAZHAKAN, MEMBER (TECHNICAL)

SP/MISC.ORDER NO.75109-75110/2025

FINAL ORDER NO.75401/2025

DATE OF HEARING : 20 FEBRUARY 2025
DATE OF DECISION : 20 FEBRUARY 2025

Per R.Muralidhar :

The reason for delay in filing the appeals before the Tribunal is explained satisfactorily. Accordingly, we condone the delay in filing the appeals before the Tribunal. The applications for condonation of delay are allowed.

2. The Revenue has also filed an application for staying the operation of Order-in-Appeal No.Kol/Cus/Port/AA/40/2019 dated 14.01.2019 passed by Commissioner of Customs (Appeals), Kolkata.

3. Prima-facie, on-going through the impugned order, we find that the order of the Id. Commissioner (Appeals) is not, ex-facie, illegal or

without jurisdiction. The Revenue's Stay Petition being filed in a routine and mechanical manner and devoid of merit, is rejected.

4. At this stage, the Id.Counsel for the respondent, submits that on identical issue in the appellant's own case, the issue has been settled by this Bench in 2018, 2019 & 2023.

5. The Id.A.R. for the Revenue, after going through the cited case laws, submits that the issue involved herein is covered by the above cited decisions.

6. Heard both sides and perused the cited case laws.

7. We find that this Bench in the case of Commissioner of Customs (Port), Kolkata Vs. Carbon Resources Private Limited vide Final Order No.75323/2023 dated 01.05.2023, has held as under :

"2. The facts of the case are that the respondent has imported gas calcined anthracite coal and electrically calcined anthracite coal and claimed classification under CTH 27011100 attracting BCD @ 2.5% and CVD @ 2%/IGST @ 5%. But the Revenue re-classified the said goods under CTH 38249090, wherein BCD @ 7.5% and CVD @ 12% has been levied. The respondent challenged the said assessment before the Id.Commissioner (Appeals) on the ground that the respondent did not receive any speaking assessment order under Section 17 (5) of the Customs Act, 1962. Further, electrically calcined anthracite coal and gas calcined anthracite are classifiable under CTH 27011100 and do not merit classification under 38249090 of the Customs Tariff Act, 1975. The said contention of the respondent were approved by the Id.Commissioner (Appeals). Against the said order, the Revenue is in appeal before us.

3. Heard the Id.A.R. for the Revenue, who reiterated the grounds of appeal.

4. We find that in the respondent's own case reported in 2018 (363) ELT 442 (Tri.-Kolkata), the issue has been settled by this Tribunal, wherein the Tribunal has held as under :

"5. After hearing both the parties and on perusal of the case record, it appears 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 @ 6%. However, the Department re-classified the said goods under CTH 3824 90 90 wherein BCD @ 7.5% and CVD @ 12% 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 TI 3824 90 90 of the Customs Tariff Act, 1975. The Commissioner of Customs (Port) has preferred an appeal before the Hon'ble CESTAT, Kolkata against the Order passed by the Commissioner of Customs (Appeals).

6. 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.

7. Further, 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 as per the ratio laid down in the case of 20 Microns Ltd. v. CCE - [2006 \(199\) E.L.T. 41](#) (Tri.-Mumbai).

8. *From the record, it also appears that calcine is the natural form and the same was applied in the instant case. When it is so, then we find no reason to interfere with the impugned order and the same is sustained. Appeal filed by the appellant is dismissed. COD is also disposed of."*

5. *The said view has been further affirmed by the Tribunal in the respondent's own case reported in 2019 (1) TMI 1891-CESTAT Kolkata, wherein the Tribunal has observed as under :*

"7. It has been contended by the Department in their appeal that calcined coal is not anthracite coal in natural form but 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) ELT 442 (Tri.-Kolkata)."

6. *As the issue has already been settled in favour of the respondent in their own case earlier, therefore, we do not find any*

infirmity in the impugned order and the same is upheld and the appeal filed by the Revenue is dismissed”.

8. Respectfully following the ratio laid down by this Tribunal in the appellant's own case, we dismiss the appeal filed by the Revenue.

(Dictated and pronounced in the open court)

(R.Muralidhar)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

mm