

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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75365 of 2024

(Arising out of Order-in-Original No. Kol/Cus/Commissioner/Port/Adjn/10/2023 dated 29.09.2023 passed by the Commissioner of Customs (Port) Custom House, 15/1, Strand Road, Kolkata 700001)

Shri Monolithics Pvt. Ltd., : **Appellant**
Plot No. 132/C, Sector-9, Bidanasi
CDA, Cuttack-14

VERSUS

Commissioner of Customs (Port) : **Respondent**
Kolkata Customs, Customs House
15/1, Strand Road, Kolkata 700001

WITH

Customs Appeal No. 75370 of 2024

(Arising out of Order-in-Original No. Kol/Cus/Commissioner/Port/Adjn/10/2023 dated 29.09.2023 passed by the Commissioner of Customs (Port) Custom House, 15/1, Strand Road, Kolkata 700001)

Shri Chandra Sekhar Samal : **Appellant**
Plot No. 132/C, Sector-9, Bidanasi
CDA, Cuttack-14

VERSUS

Commissioner of Customs (Port) : **Respondent**
Kolkata Customs, Customs House
15/1, Strand Road, Kolkata 700001

WITH

Customs Appeal No. 75375 of 2024

(Arising out of Order-in-Original No. Kol/Cus/Commissioner/Port/Adjn/10/2023 dated 29.09.2023 passed by the Commissioner of Customs (Port) Custom House, 15/1, Strand Road, Kolkata 700001)

Shri Randhir Singh : **Appellant**
H. No. 382/25, Arya Nagar,
Suri Petrol Pump Wali Gali, Sonapat-131001

VERSUS

Commissioner of Customs (Port) : **Respondent**
Kolkata Customs, Customs House
15/1, Strand Road, Kolkata 700001

Appeal Nos.: C/75365, 75370, 75375/2024
& 75381-75383/2024-DB

WITH

Customs Appeal No. 75381 of 2024

(Arising out of Order-in-Original No. Kol/Cus/Commissioner/Port/Adjn/10/2023 dated 29.09.2023 passed by the Commissioner of Customs (Port) Custom House, 15/1, Strand Road, Kolkata 700001)

Shri Ashwani Industrial Minerals Corp.

: Appellant

H. No. 382/25, Arya Nagar,
Suri Petrol Pump Wali Gali, Sonapat-131001

VERSUS

Commissioner of Customs (Port)

: Respondent

Kolkata Customs, Customs House
15/1, Strand Road, Kolkata 700001

WITH

Customs Appeal No. 75382 of 2024

(Arising out of Order-in-Original No. Kol/Cus/Commissioner/Port/Adjn/10/2023 dated 29.09.2023 passed by the Commissioner of Customs (Port) Custom House, 15/1, Strand Road, Kolkata 700001)

M/s. Orissa Chorme Export and Mining Co. Ltd.,

: Appellant

A-65/1, Nayapalli, Bhubaneswar, Odisha-751012
(Represented through its Director, Mr. Abhilash Mania)

VERSUS

Commissioner of Customs (Port)

: Respondent

Kolkata Customs, Customs House
15/1, Strand Road, Kolkata 700001

AND

Customs Appeal No. 75383 of 2024

(Arising out of Order-in-Original No. Kol/Cus/Commissioner/Port/Adjn/10/2023 dated 29.09.2023 passed by the Commissioner of Customs (Port) Custom House, 15/1, Strand Road, Kolkata 700001)

Shri Abhilash Mania

: Appellant

**Director of M/s. Orissa Chorme Export and
Mining Co. Ltd.,**

A-65/1, Nayapalli, Bhubaneswar, Odisha-751012

VERSUS

Commissioner of Customs (Port)

: Respondent

Kolkata Customs, Customs House
15/1, Strand Road, Kolkata 700001

APPEARANCE:

Shri Abhijit Biswas, Advocate

Shri S. R. Mahapatra, Advocate for the Appellant

Shri S. Debnath, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)

HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOS. 76151-76156/2026

DATE OF HEARING / DECISION: 19.08.2026

Order: [PER SHRI ASHOK JINDAL]

All the appeals are having a common issue and therefore, all are disposed of by way of a common order.

2. The facts of the case are that the appellant-company is a manufacturer of Indian Refractory Mortar and Refractory Bricks and exporting the same by declaring under CTH 3816 0000. Whereas the Revenue alleges that these are 'Chrome Ore Concentrates' which are, classifiable under CTH 2610.

3. These goods were supplied during the period 2016-17.

4. In 2020, the Directorate of Revenue Intelligence (DRI) came to the conclusion, after recovery of samples from shipping bills of one exporter by the name of M/s. Falcon Exports, that these goods are classifiable under CTH 2610. In effect, no duty is payable if the goods are classified under CTH 3816 0000 as claimed by the appellants.

5. Accordingly, proceedings were initiated against all the appellants and consequently, by way of the impugned order, the demand of duty came to be confirmed; penalties were also imposed.

6. Aggrieved from the said order, the appellant is before us.

7. Heard the parties and considered their submissions.

8. We find that an identical issues has already been dealt with by this Tribunal in the case of *Commissioner of Customs (Port) v. Alliance International [2025 (2) TMI-1214-CESTAT, Kolkata] (Final Order Nos. 75441-75460/2025 dated 24.02.2025 - CESTAT, Kolkata)* wherein it was observed as under: -

"8. We find that during the course of proceedings, samples were drawn and the test reports were obtained from CRCL. For better appreciation of the facts of the case, the test reports are being extracted herein below:

.....

The above samples RS1 and FS1 correspond to the Raw Material and Final Product manufactured in the premises of M/s Nilachakra, who is one of the two major Suppliers of the product to M/s Alliance International and M/s Falcon Exports. It has been termed as 'Indian Refractory Mortar' by M/s Nilachakra the domestic supplier as well as by the exporters- M/s Falcon Exports and M/s Alliance International.

From the test report it clearly appears that both the sample of Raw Material i.e. Chrome Ore as well as the sample of Final Product i.e. Chrome Concentrate/Crome Mortar collected from the premises of M/s Nilachakra are Chrome Ore Concentrate with percentage of Cr2O3 in the range of 71% to 73% along with small amounts of oxides of Iron, Aluminium, Magnesium, Silica etc.

(ii) The Test report Nos: 73 to 75/DSM/06.10.2020 dated 07.12.2020 at Sl. No. fill above corresponds to the samples of Raw Material(TO), Processed Chrome (CC). Refracton MortariIRMI drawn under Mahazar dated 11.09.2020 from the premises of M/s Orissa Chrome Export and Mining Ltd.

.....

It may be noted that M/s Orissa Chrome Export is a major supplier of the product termed as 'Indian Refractory Mortar that is exported by the said 3 companies, namely, M/s Falcon Exports, M/s Alliance International and M/s Metfab Export House. From the test report it clearly appears that the samples of Raw Material (TO), Processed Chrome (CC). Refractory Mortar (IRM) collected from premises of M/s Orissa Chrome Export during 3 different stages of manufacture are all Chrome ore Ore Concentrate with percentage of Cr₂O₃ in the range of 54% to 71% along with small amounts of oxides of Aluminium, Magnesium, Silica etc. It clearly appears that the process undertaken by M/s Orissa Chrome is the concentration of Cr₂O₃ in Chrome Concentrate.

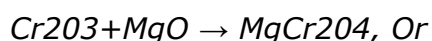
(iii) The Test report Nos: 76 to 79/DSM/06.10.2020 dated 07.12.2020 below corresponds to the samples of Indian Refractory Mortar drawn under Mahazar dated 12.09.2020 from the shipping Bill No. 4864104 dated 04.09.2020 filed by M/s Falcon Exports.

9. The test report indicates that the sample may be considered as "Chrome Ore Concentrate", which shows that the test reports are not conclusive. Further to classify the goods under Chapter 2610 on Chapter Note 2 of Chapter 26 is relevant, which is reproduced below:

"Chapter Note 2 of Chapter 26 states :

2. For the purposes of headings 2601 to 2617, the term "ores" means minerals of mineralogical species actually used in the metallurgical industry for the extraction of mercury, of the metals of heading 2844 or of the metals of Section XIV or XV, even if they are intended for non-metallurgical purposes. Headings 2601 to 2617 do not however, include minerals which have been submitted to processes not normal to the metallurgical industry."

10. We further take note of the fact that the chemical composition of Chromite is FeCr_2O_4 . It also forms a solid solution with magnesiochromite (MgCr_2O_4). So, $(\text{Fe,Mg})\text{Cr}_2\text{O}_4$ is the general chemical formula. This composition will consist of compounds Cr_2O_3 , FeO and MgO . Chromites may be formed by reaction of chromium (III) oxide with a metal oxide:



The exported product has chemical composition of:

Cr_2O_3 minimum 59% and actual in range 66.8% to 73.7%,

Fe_2O_3 maximum 26% and actual in range 10.1% to 13.9%,

Al_2O_3 maximum 15% and actual in range 4.0% to 7.1%,

MgO maximum 11% and actual in range 4.7% to 8%,

SiO_2 maximum 1% and actual in range 0.69% to 3.6%,

Therefore, the chemical composition of the exported product, created by mixture of chromite, magnesite (chemical formula MgCO_3) and bentonite (Linear Formula: $\text{Al}_2\text{O}_3 \cdot 2\text{SiO}_2 \cdot \text{H}_2\text{O}$) is different than chromite.

11. Further the exported product is not actually used in the metallurgical industry for the extraction of the metals of Section XV (chapter 81 covering chromium). It is going to M/s ITACA Spain which produces frits, glazes, pigments, inks and ceramic additives. The process of mixing chromite with magnesite and bentonite is not normal to metallurgical industry. So, it is evident the exported product is not falling under heading 2610 as per chapter note 2 of chapter 26 read with HSN explanatory notes above.

12. Therefore, the impugned goods goes out of Chapter 26 of the Customs Tariff Act, 1962. When the said goods goes out of Customs Tariff Heading of 2610, there is no case of the Revenue and the said issue has been examined by the adjudicating authority in the impugned order, which is reproduced herein below :

"3.1) This is a case wherein the classification of the products exported as "Indian refractory mortar" is under dispute. The importer has self-declared their goods are classifiable under CTH 3816000 as these are refractory mortar as specific product under chapter 38 for miscellaneous chemical products.

3.2) The show cause notice, based on test reports from Customs house laboratory Chennai, technical specifications from the domestic suppliers whose goods were exported and statements Directors of export firms and domestic supplier under section 108 of Customs Act, insists that the correct classification is CTH 2610 as Chromium ores and concentrates. With the change in CTH, export duty @30% is leviable under second schedule of Customs Tariff Act 1975 and benefit of 3% MEIS reward rate under FTP para 3.04 read-with Public notice 61/2015-20 dt 07.03.2017 of DGFT, Ministry of Commerce, will not be available.

3.3) So the plain question that needs to be decided is whether the goods declared by party in the Shipping Bills are classifiable under CTH 3816 as refractory mortar or under CTH 2610 as 'chromium ores and concentrates'.

3.4) The classification of the goods is to be decided based on General Rules for Interpretation of first Schedule of Customs Tariff Act 1975 read with Harmonised System of Nomenclature (HSN) Explanatory Notes.

3.5) As per rule 1 of the General Rules for Interpretation, classification shall be determined according to the terms of headings and any relative section or chapter notes.

3.6) In this present case the items exported are declared as "Indian Refractory Mortar", as declared by the party in the shipping Bills in annexure A to C of SCN.

The Test report Nos: 76 to 79/DSM/06.10.2020 dated 07.12.2020 of Chemical Examiner Customs House Lab Chennai, for the four samples of Indian Refractory Mortar drawn under Mahazar dated 12.09.2020 from the shipping Bill No. 4864104 dated 04.09.2020 filed by M/s Falcon Exports gave following details (para 4.4.8 of the SCN):

Brownish black coloured coarse powder

Chemical composition: 72.1% to 73.7% Cr₂O₃, 10.6% to 13.9% Fe₂O₃, 4.1% to 5.6% Al₂O₃, 4.7% to 6.2% MgO, 0.69% to 0.90% SiO₂.

Based on the test findings, HSN chapter general notes and literature available in the laboratory, samples may be considered as Chrome ore concentrate.

The exporters are purchasing the product through two domestic supplies via GST invoices. The two suppliers are M/s Orissa Chrome Export and Mining Limited A-65/1, Nayapalli, Bhubaneswar-and M/s Nilachakra Mineral Limited, No. 909, Nankar, Jagatpur, Cuttack-754021 These two companies are registered in Goods and Services Tax Act 2017 to supply products of CTH 3816.

The product details as per M/s Orissa Chrome Export and Mining Ltd (in para 4.4.4.3 of the SCN) are as below:

Trade name: Indian Refractory Mortar

Common name: Chrome ore, chromite ore, chromite, iron chromite

CAS no.: 1308-31-2

Product use: Used in foundry, refractory and steel manufacture applications.

Chemical composition: Chromium 59% minimum as Cr₂O₃, Iron Oxide 26% maximum as Fe₂O₃, Aluminum 15% maximum as Al₂O₃, Magnesium Oxide 11% maximum as MgO, Silica 1% maximum as SiO₂.

Chromite sand is a complex mixture of various elements. The above elements, with the exception of Silica, are part of the spinel structure of the material and as such cannot be separated from the sand grain. The oxides shown above do not exist as free, uncombined oxides, but rather in complex mineral combinations.

The Test report Nos: 73 to 75/DSM/06.10.2020 dated 07.12.2020, of Chemical Examiner Customs House Lab Chennai, for samples drawn at the premises of M/s Orissa Chrome Export and Mining

Ltd (para 4.4.8 of the SCN) gives the following details for Indian Refractory Mortar [IRM].

Brownish black coloured moist coarse powder

Chemical composition: 66.8% Cr₂O₃, 10.9% Fe₂O₃, 7.1% Al₂O₃, 8% MgO, 3.6% SiO₂.

Based on the test findings, HSN chapter general notes and literature available in the laboratory, samples may be considered as Chrome ore concentrate.

The Test report Nos:71&72/DSM/06.10.2020 dated 07.12.2020, of Chemical Examiner Customs House Lab Chennai, for Final Product i.e. Chrome Concentrate/Chrome Mortar drawn from the premises of M/s Nilachakra Industrial Minerals under Mahazar dated 11.09.2020 (para 4.4.8 of the SCN) gives the following details for Indian Refractory Mortar [IRM].

Dark Brownish grey coarse powder along with a few off-white very small lumps

Chemical composition: 72.9% Cr₂O₃, 10.1% Fe₂O₃, 4% Al₂O₃, 6.2% MgO, 1.1% SiO₂.

Based on the test findings, HSN chapter general notes and literature available in the laboratory, samples may be considered as Chrome ore concentrate.

3.8) So, from the evidence available, the product exported is in form of brownish powder and having a chemical composition of Cr₂O₃ minimum 59% and actual in range 66.8% to 73.7%

** Fe₂O₃ maximum 26% and actual in range 10.1% to 13.9%,*

Al₂O₃ maximum 15% and actual in range 4.0% to 7.1%,

MgO maximum 11% and actual in range 4.7% to 8%,

SiO₂ maximum 1% and actual in range 0.69% to 3.6%,

The exported product purchaser M/s ITACA Spain is clearing it as "Harina De Cromita" (broadly

translated to "Chromite flour/ Dust" in English) and classified under the CTH "2610 0000" with Spanish Customs. Further CRCL Chennai Lab has opined that based on HSN chapter, general notes and literature available in the laboratory, samples may be considered as Chrome ore concentrate.

3.9) There are three specific headings which are applicable to the exported goods.

(a) Heading: 2610-Chromium ores and concentrates

(b) Heading: 3816 Refractory cements, mortars, concretes and similar compositions, other than products of heading 3801;

(c) Heading: 8112-Beryllium, chromium, germanium, vanadium, gallium, hafnium, indium, niobium (columbium), rhenium and thallium, and articles of these metals, including waste and scrap

3.10) The relative section or chapter notes of the headings are given below:

Chapter note 2 of chapter 26 states:

2. For the purposes of headings 2601 to 2617, the term "ores" means minerals of mineralogical species actually used in the metallurgical industry for the extraction of mercury, of the metals of heading 2844 or of the metals of Section XIV or XV, even if they are intended for non-metallurgical purposes. Headings 2601 to 2617 do not, however, include minerals which have been submitted to processes not normal to the metallurgical industry.

ii) Section notes 3 and 4 of section VI (covers Chapter 28 to 38) states:

3. Goods put up in sets consisting of two or more separate constituents, some or all of which fall in this Section and are intended to be mixed together to obtain a product of Section VI or VII, are to be classified in the heading appropriate to that product, provided that the constituents are:

(a) having regard to the manner in which they are put up, clearly identifiable as being intended to be used together without first being repacked;

(b) presented together; and

(c) identifiable, whether by their nature or by the relative proportions in which they are present, as being complementary one to another.

4. where a product answers to a description in one or more of the headings in section VI by virtue of being described by name or function and also to heading 3827, then it is classifiable in a heading that references the product by name or function and not under heading 3827.

[Heading 3827 covers Mixtures containing halogenated derivatives of methane, ethane or propane, not elsewhere specified or included].

(ii) Section notes 3, 5, 6 & 8 of section XV (covers chapter 72 to 83) states:

3. Throughout this Schedule, the expression "base metals" means: iron and steel, copper, nickel, aluminium, lead, zinc, tin, tungstenwolfram), molybdenum, tantalum, magnesium, cobalt, bismuth, cadmium, titanium, zirconium, antimony, manganese, beryllium, chromium, germanium, vanadium, gallium, hafnium, indium, niobium (columbium), rhenium and thallium.

5. Classification of alloys (other than ferro-alloys and master alloys as defined in Chapters 72 and 74):

(a) an alloy of base metals is to be classified as an alloy of the metal which predominates by weight over each of the other metals;

(b) an alloy composed of base metals of this Section and of elements not falling within this Section is to be treated as an alloy of base metals of this Section if the total weight of such metals equals or exceeds the total weight of the other elements present;

(c) in this Section, the term "alloys" includes sintered mixtures of metal powders, heterogeneous intimate mixtures obtained by melting (other than cermets) and intermetallic compounds

6. Unless the context otherwise requires, any reference in this Schedule to a base metal includes a reference to alloys which, by virtue of Note 5 above, are to be classified as alloys of that metal.

8. In this Section, the following expressions have the meanings hereby assigned to them:

(a) *waste and scrap*: metal waste and scrap from the manufacture or mechanical working of metals, and metal goods definitely not usable as such because of breakage, cutting-up, wear or other reasons.

(b) *Powders*: products of which 90% or more by weight passes through a sieve having a mesh aperture of 1 mm.

3.11) The relevant HSN explanatory notes cover:

(1) *Heading 81.12: ... Note (B) Chromium is mainly extracted from chromite (chrome iron ore), which is converted to the sesquioxide which is then reduced to produce chromium metal.....*

(ii) *Heading 38.16: this heading covers certain preparations (c.g. for furnace linings) with a basis of such refractory materials as chamotte and dinas earths, crushed or ground corundum, powdered quartzites, chalk, calcinated dolomite, with an added refractory binder (for example sodium silicate, magnesium or zinc fluosilicates). Many of the products of this heading also contain non-refractory binders such as hydraulic binding agents.*

The heading further covers refractory concretes consisting of mixtures of heat-resistant hydraulic cements (e.g. aluminous cements) and refractory aggregates, used for the foundation of furnace, coke ovens etc, or for patching furnace linings.....

(iii) *Chapter 26 General:.*

The term ores applies to metalliferous minerals associated with the substances in which they occur and with which they are extracted from the mine.

Ores are seldom marketed before 'preparation' for subsequent metallurgical operations. The most important preparatory processes are those aimed at concentrating the ores.

For the purposes of headings 26.01 to 26.17, the term 'concentrates' applies to ores which have had part or all of the foreign matter removed by special treatments, either because such foreign matter

might hamper subsequent metallurgical operations or with a view to economical transport.

Processes to which products of headings 26.01 to 26.17 may have been submitted include physical, physio-chemical or chemical operations, provided they are normal to the preparation of the ores for extraction of metals. With the exception of changes resulting from calcination, roasting or firing (with or without agglomeration), such operations must not alter the chemical composition of the basic compound which furnishes the desired metal.

3.12) So, as per HSN explanatory note of heading 81.12 read with chapter note 2 of chapter 26, the chromite (chrome iron ore) going for extraction of chromium will be classified as chromium ore and concentrate. Further as per HSN explanatory note of chapter 26, the chemical composition of basic compound which furnishes the desired metal should not be altered by any operations.

3.18 The chemical composition of Chromite is FeCr_2O_4 (source Wikipedia: <https://en.wikipedia.org/wiki/Chromite>). It also forms a solid solution with magnesiochromite (MgCr_2O_4). So, $(\text{Fe,Mg})\text{Cr}_2\text{O}_4$ is the general chemical formula.

This composition will consist of compounds Cr_2O_3 , FeO and MgO .

Chromites may be formed by reaction of chromium(III) oxide with a metal oxide:



The exported product has chemical composition (as per para 3.8 above) of:

Cr_2O_3 minimum 59% and actual in range 66.8% to 73.7%,

Fe_2O_3 maximum 26% and actual in range 10.1% to 13.9%,

Al_2O_3 maximum 15% and actual in range 4.0% to 7.1%,

MgO maximum 11% and actual in range 4.7% to 8%,

SiO₂ maximum 1% and actual in range 0.69% to 3.6%,

3.14 Therefore, the chemical composition of the exported product, created by mixture of chromite, magnesite (chemical formula MgCO₃) and bentonite (Linear Formula: A12O₃-2SiO₂ H₂O) is different than chromite. [source: <https://www.americanelements.com/bentonite-1302-78-9>, <https://en.wikipedia.org/wiki/Magnesite>) and

Further the exported product is not actually used in the metallurgical industry for the extraction of the metals of Section XV (chapter 81 covering chromium). It is going to M/s ITACA Spain which produces frits, glazes, pigments, inks and ceramic additives (source: <https://www.esmalglass-itaca.com/en/products-and-solutions>). The process of mixing chromite with magnesite and bentonite is not normal to metallurgical industry.

So, it is evident the exported product is not falling under heading 2610 as per chapter note 2 of chapter 26 read with HSN explanatory notes above.

3.15) As the exported product is carrying Chromium as a compound (Cr₂O₃) and not as a base metal (Cr), the exported product is not falling under heading 8112, as per Section note 3 of section XV.

3.16) The exported product is used by the name Refractory mortar'. Its function is to be an additive to refractory functioning. So as per Section note 4 of section VI, the exported product would qualify under heading 3816.

As per explanatory notes to heading 38.16, the heading covers refractory aggregates, used or the foundation of furnace, coke ovens etc, or for patching furnace linings.

As per materials used as Refractory aggregates, one group is Spinel (source: An Introduction to Refractory Aggregates → <https://www.azom.com/article.aspx?ArticleID=1411>). Spinel is used in refractories and are usually synthesized from trivalent and bivalent oxides.

These oxides are mixed at equivalent mole ratios, forming materials of general formula XY2O4. The double oxide of magnesia and alumina (MgAl2O4) is a common refractory spinel product. More examples of spinels are below:

<i>Aluminate</i>	<i>Chromite</i>
<i>Ferrite</i>	
<i>MgO.Al2O3</i>	<i>ZnO.Cr2O3</i>
<i>ZnO.Fe2O3</i>	
<i>FeO.Al2O3</i>	<i>MgO.Cr2O3</i>
<i>MgO.Fe2O3</i>	
<i>MnO.Al2O3</i>	<i>FeO.Cr2O3</i>
<i>FeO.Fe2O3</i>	
<i>ZnO.Al2O3</i>	<i>MnO.Cr2O3</i>
<i>MnO.Fe2O3</i>	
<i>NiO.Al2O3</i>	<i>NiO.Cr2O3</i>
<i>NiO. Fe2O3</i>	

Spinel (MgAl2O3) as well as dichromite (MgO.Cr2O3) are employed in refractory castable formulations. Their melting points are 2135 °C and 2350 °C, respectively. At high temperature, spinel is more neutral than alumina but its corrosion resistance against standard slags is high. Against Fe2O3, Al3+ may be replaced by Fe3+ that causes corrosion.

Further as per Chrome Compounds: Applications In Refractory

Cements, Refractory Materials,

(source: <https://mineralmilling.com/chrome-compounds-refractory-cements-refractory-materials/>)..... Chrome flour is described as a neutral refractory, meaning it is highly tolerant of acidic and basic environments, therefore it is prized for its wide amount of use cases. Another useful classification is by measured refractoriness. Chromite has a melting point in excess of 2,000 °C and is therefore deemed a 'super' refractory - further adding to its wide applicability.

Chrome flour is the incredibly finely ground powder of iron chromite and is used extensively in the production of magnesia chrome refractory bricks, for the construction of furnaces and kilns. In refractory brick form, chromite alongside alumina and magnesium oxide has been shown to be stable and strong up to 1,900°C.

The export product is domestically procured from M/s Orissa Chrome Export and Mining Limited and M/s Nilachakra Mineral Limited.

The supplier M/s Orissa Chrome Export and Mining Limited is registered under Goods and Services Tax Act 2017 with GSTIN 21AAACO4389B1ZU for supply of 2610000 and 38160000 as below:

.....

The supplier M/s Nilachakra is registered under Goods and Services Tax Act 2017 with GSTIN 21ALXPR3852R123 for supply of 38160000 as below :

.....

So both the suppliers are registered to supply refractory mortar under CTH 38160000.

M/s Orissa Chrome is also having license from the State Pollution Control Board Orissa order dt 31.03.2016 to manufacture Chrome Ore based refractory Monolithics of 2500 MT per month.

3.17) So, as per rule 1 of general rules of interpretation the CTH is decided as 3816. The exported product is made by mixing chromite, bentonite and magnesia with chromite giving the essential character with minimum 59% Cr₂O₃.

3.18 As there are some evidences in the notice that indicate the export product are chrome ore concentrate, these are evaluated below. The exporter has declared the products as 'Indian Refractory Mortar' and has not declared its chemical composition in the shipping bills or attached invoices. So there is a possibility of suppression of facts.

First evidence is that Shri Amandeep Singh Bal had also exported the said product "Indian Refractory Mortar" through an entity named "Metfab Export House". The Kolkata Customs had noticed that the product "Indian Refractory Mortar" had the characteristics of Chrome Oro concentrates and asked them why export duty of 30% should not be demanded by them during some enquiry initiated in 2016, A letter dt 12.08.2016 was issued to M/s Metfab Export house to finalize the provisional assessment based on test report. However, this evidence is non-conclusive as to what happened at the time of final assessment.

Second evidence is the practice that once the goods have been cleared for export from India, the original Bill of Lading is surrendered and a second set of Bill of Lading (Switch bill of lading) is got issued by the carrier (or its agent) to substitute the original bills of lading issued at the time of shipment; in the Switch Bill of Lading M/s PCF Associates, UAE are mentioned as the suppliers of the product and in the majority of situations, M/s ITACA SA, Spain is indicated as the buyer. This evidence establishes the use of the export product where it is consumed as Chrome flour under CTH 2610 at M/s ITACA SA. There is no evidence to suggest that substituting importer from M/s PCF Associates UAE to M/s ITACA Spain is impacting the product utilization. It appears like a business practice with contract through M/s PCF Associates. The description of goods does not change in the switch bill of lading. The classification under CTH 2610 covers chromium ores and concentrates and HSN explanatory notes state 'this heading covers chromite (or chrome iron ore), i.e. oxide of chromium and iron.' The exported good is cleared as chromite flour by M/s ITACA Spain.

The test report of export product in India does not cover only chromite. The rationale for change of nomenclature at Spain is not clear as chromite flour is a refractory aggregate.

Third evidence is that emails of Falcon Exports (from ID amanbal@falconesports.in) indicate that Sh Amandeep Singh Bal when attempting to negotiate with the potential Customers would hold out that M/s Falcon Exports are exporting Chrome Based Indian Refractory Mortar (HSN Code:

38160000) and that it was similar to Chrome Concentrate. This evidence is not changing the fact that the export is for refractory mortar and not chrome concentrate. Further the evidence at para 4.4.2 and 4.4.3 of the notice is for product at price CNF Bhusan port basis and chrome buyer Hong Kong'. The exported product in the notice is for export to UAE and Spain, and so the products in para 4.4.2 and 4.4.3 are not similar to export products in current notice.

Fourth evidence is that Shri Satish Rout, Proprietor, M/s Nilachakra one of the two Indian suppliers from where the export product the so called "Indian Refractory Mortar" was sourced, in his statement dated 12.09.2020 made under Section 108 of the Customs Act, stated that the product that has been sourced from their firm is "Chrome Ore & Concentrate, all sorts" which has application in the Refractory Industry. This evidence is establishing that chromite sold is used in refractory industry. It does not establish the export product is used in metallurgical industry.

Fifth evidence is covered in para 4.4.4.2 in email between ITACA Spain and Orissa Chrome. In email dt 12.04.2018 from Sh AP Dash (of M/s Orissa Chrome) to Sh Manuel Ribera of ITACA, the company is described as direct producer of chrome concentrate and an offer is made to supply 648 MT of 59-60% Cr₂O₃ with SiO₂ less than 1.5% per month with further customization on Cr₂O₃ and SiO₂. This evidence is in sync with the product tested at time of export and analyzed above. The fact is that M/s Orissa Chrome is a producer of Chrome concentrate under CTH 2010 and is so registered with GST is clear above. So there is no evidence that chrome concentrate is supplied in guise of refractory mortar.

Sixth evidence in para 4.4.4.4 of the notice that Peem ADC-4 or M/B Orissa Chrome be the year 2018-19 has been filed by the said Company on the MCA website pursuant to Section 137 of the Companies Act, 2013 and sub-rule (2) of Rule 12 of Companies Accounts) Rules, 2014 and it gives description of products as chrome ores and concentrates. And this is their complete turnover. However, the financial document is related to Orissa Chrome and there is a gap between For

ADC-4 and OST registration for supply. The evidence has to be based on the actual product exported. The sum ACC-4 does not establish the exported product is chrome ore and concentrate.

Seventh evidence is revenue lab report observation, "Based on the test findings, HSW Chapter general sales and certificates available in the laboratory, samples may be considered as Chrome ore concentrate.". However, this is an observation. Lab report can give the chemical composition; however, the classification is decided by the proper officer under section 17 of Customs Act.

Eight evidence is para 4.5.6.1 of the notice) wherein the Statement of Shei Amandeep Singh Bal, on 08.12.2020 and 09.12.2020, on basis of samples lab report, he stated, "I would like to mention that from the said documents, it clearly appears that the product exported by firms M/s Falcon Exports, M/s Meglad Export House and M/s Alliance International controlled by me by declaring as "Indian Refractory Mortar appears to be "Chrome Ore Concentrate and may be classifiable under CTH 2610 0000.". This statement is based on evidence that is already evaluated above, wherein the heading 3816 is the classification of export products in place of heading 2610.

Ninth evidence is submission by M/ Orissa Chrome at time of personal hearing on 15.12.2022 that the product supplied by them to the exporter is actual Chromium ore (UTH 2010), and against them a separate Show Cause Notice dated 2 November 2031 issued by the Principal Commissioner of Customs (Port), Kolkata where the Noticee No.6 and 21 had exported the same product. The Counsel submitted that the demand raised is paid before the issuance of the Show Cause Notice. Thereafter, The Noticee No.6 and 21 have also filed an application for settlement for the said Show Cause Notice before the Customs and Central Excise Settlement Commission, Additional Bench at Kolkata with Settlement Application No. BA(C)-1218 to 1219 of 2022 dated 12 April 2022 which is pending adjudication before the Settlement Commission, Kolkata. However, this admittance is not supported by the facts of the present case wherein chemical composition of exported product makes it a refractory aggregate. This admittance is

also contrary to what party submitted in written submissions and the party held that any such duty liability be paid by the exporter.

Tenth evidence is submission by M/s Orissa Chrome at time of personal hearing on 15.12.2022 that the exporter was aware of the exported goods are chrome ore and not mortar. M/s Alliance International and other exporters also fabricated the lab report of RUD 11 on behalf of M/s Orissa Chrome signed by one Mr A Negi as lab in-charge. However, no such document was issued by M/s Orissa Chrome. Mr. Negi is an employee of M.s Alliance International and is paid for by M/s Alliance International as per bank documents in RUD-24. So, the exporter has submitted forged documents with Customs. However, this evidence is not relevant as classification is based on the Channai lab report wherein chemical composition is established.

3.19) So, with the heading decided as 3816 under rule 1 of general rules of interpretation. As the heading is decided, we skip rules 2 to 5 and go to rule 6 of the general rules for the interpretation of the first schedule of Customs Tariff to determine the sub-heading There is only one sub heading CTH 381600, and so the classification is finalised as CTH 351600 [CTH 38160000 at eight-digit level]

3.20) (a) In CC Vs Madhan Agro Industries (India) [2018 (361) ELT A 116 (5C)] Hon'ble Apex Court has observed that classification can't be resolved on the basis of perception of consumer or customer but on the basis of headings and sub-headings and on an interpretation of provision of relevant chapter notes.

(b) Similarly, in LML Ltd Vs CC [2010 (258) ELT 321 (SC)] Hon'ble Apex Court has observed that for resolving any dispute relating to tariff classification, a safe guide is internationally accepted nomenclature emerging from HSN.

(c) In OK Play (India) Ltd Vs CCE (2005 (180) ELT 300 (SC)] Hon'ble Apex Court has observed that functional utility, design, shape and predominant usage have also got to be taken.

3.21) With the classification held at 8-digit level as CTH 38160000 (refractory mortar), the

declarations (shipping bills) at time of export are held as correctly filed and all the proceedings need to be dropped.

3.22) Considering the fact that the chemical composition is essential to differentiate between chrome ore & concentrate and refractory mortar made out of chromite, the declarations made by exporter is held as incomplete without the chemical composition at time of export. A general declaration as "Indian refractory mortar without chemical composition specifications and material safety data sheet (MSDS) is incorrect particular of the export product making the export product prone to mis-declaration. The exporter does the testing before procurement from domestic suppliers and this data is available with exporter. The practice is not corrected by the exporter even after the issue of chemical composition was identified by Kolkata Customs in 2016. So this practice is deliberate and the exporter Mr. Amandeep Singh Bal, Director and main controller of the export business, is liable to a nominal personal penalty under section 114AA of Customs Act to ensure such mistakes are not repeated.

3.23) 110 MTs of item declared to be "Indian Refractory Mortar" with the FOB value of Rs. 30,17,905/- (Thirty Lakh Seventeen Thousand Nine Hundred and Five Only), exported by M/s Falcon Exports vide Shipping Bill No. 4864104 dated 01.09.2020 through Kolkata Port have been seized under section 110 of Customs Act. As the declaration is held as correctly made, the export goods are not liable for confiscation under Section 113(i) of the Customs Act, 1962 and are to be released to exporter.

3.24) The amount of Rs.50,00,000 (Rupees Fifty Lakhs only) paid voluntarily by M/s Falcon Exports during investigation needs to be refunded to party after adjusting for any liabilities like penalty and other dues related to the seizure.

3.25) The show cause notice was issued on 08.03.2021. Hon'ble Supreme Court in Suo Moto WP(C) no. 3 of 2020 and MA 21 of 2022, has extended the time of limitation due to outbreak of COVID-19 pandemic. Hon'ble Court has observed in para 5 of its order that "....it is directed that the

period from 15.03.2020 till 28.02.2022 shall stand excluded for the purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings",

So, in present case, the limitation period of 12 months under section 28(9) of Customs Act shall be effective from 01.03.2022. Further, period till 06/06/2022 is excluded under section 28(9A) on account of Board's instruction no. 04/2021-Cus date 17.03.2021 (the party was intimated on 26.11.2021 vide DIN 202104DDJ4000000FD89 regarding transferring case to call book) read with Board letter F No 450/72/2021-Cus IV(Part II) dt 06.06.2022."

13. We do not find any infirmity in the impugned order. Therefore, we hold that the goods in question cannot be classified under CTH 2610, therefore, no export duty is payable by the respondent.

14. In that circumstances, on merit, we do not find any infirmity in the impugned order. Accordingly, the same is upheld.

15. We further take note of the fact that when no demand of duty is sustainable against the respondents, therefore, no penalty can be imposed on Shri Amandeep Singh Bal, on whom, a penalty of Rs.10,00,000/- has been imposed under Section 114AA of the Customs Act, 1962. Therefore, the penalty imposed on Shri Amandeep Singh Bal is dropped."

9. As the issue has already been settled in the case of Alliance International (supra) we hold that the merit classification of the goods in question is CTH 3816 0000 and cannot be classified under CTH 2610.

10. Therefore, no export duty is payable by the appellants. Consequently, we also hold that no penalty is imposable on the appellants.

11. In view of this, we set aside the impugned orders and allow the appeals, with consequential relief, if any.

(Operative part of Order was pronounced in Open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

rkp