

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, WEST ZONAL BENCH AT MUMBAI**

COURT No. I

Appeal No. C/259/09

(Arising out of Order-in-Original No. 177/2008/CAC/CC(I)/SR/
Gr.I dated 24.12.2008 passed by Commissioner of Customs
(Import), Mumbai)

Bentee Organoclays P. Ltd.

Appellant

Vs.

**Commissioner of Customs (Import)
Mumbai**

Respondent

Appearance:

Ms. Shamita Patel, Advocate
Shri C. Singh, Asst. Commr (AR)

for appellant
for respondent

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)

Hon'ble Mr. Raju, Member (Technical)

Date of Hearing: 07.03.2018

Date of Decision: 07.03.2018

FINAL ORDER NO. A/85494/2018

Per: Archana Wadhwa

After hearing both sides, we find that during the period April 2003 to September 2007, the appellant had imported Bentonite Clay and cleared it by classifying the same under CTH 250810 which specifically covers Bentonite Clay. The department accepted the said classification, after examination and in some cases after testing, the said goods and allowed clearance of the same.

1.2 Subsequently in November 2008, show-cause notice dated 12.11.2008 was issued to the appellant in which it was alleged that the said goods were 'Toncil Optimum 210 FF' and that as per Board Circular No. 32/2002-Cus dated 10.6.2002, Toncil Optimum is Activated bentonite clay classifiable under CTH 38029019 attracting higher duty than that under CTH 250810. The contention raised in the Notice was contested by the assessee on the basis that the allegation that imported goods were 'Toncil Optimum' was factually incorrect since the appellant had never imported 'Toncil Optimum'. The show-cause notice covered period beyond six months and in fact some part of the period was even beyond five years and was assailed on limitation.

2. After hearing the learned Advocate for the appellant as also the learned A.R. for the Revenue, we note that even if the Revenue's stand that the goods in question are 'Activated Bentonite' is accepted even then the same has to be held as classifiable under CTH 250810 till the period 31.12.2006, as held by the Tribunal in the case of *Komal Trading Co. v. CC - 2014 (301) ELT 506 (Tri. Mum)*. For better appreciation of the reasoning adopted by the Tribunal, we reproduce Para 4.7 of the said order.

"4.7 However, when the 8 digit tariff was introduced w.e.f. 1-2-2003, in our view, an error was committed by specifically

including activated Bentonite in CTH 2508 10 90 (para 4.1 above refers). This mistake was rectified only vide Notification No. 137/2006-Cus. (N.T.), dated 29-12-2006 which amended the tariff description by omitting the words “activated” in the said tariff entry. The said changes in the tariff description came into effect from 1-1-2007. Since classification has to be determined in terms of the headings and any relative Section or Chapter Notes, we are constrained to hold that, for the period from 1-2-2003 to 31-12-2006, activated Bentonite has to be classified under CTH 2508 10 90 (because of its specific inclusion in the tariff description). However, for the period prior to 1-2-2003 and from 1-1-2007 onwards, when there is no specific inclusion, in view of Note 1 to Chapter 25 which excludes products whose structure has undergone a change, the said product merits classification under CTH 3802 90 19 and we hold accordingly.

3. As such, we find that the issue has been decided by the Tribunal and there are no merits in the Revenue's stand. Further, we find that by the said decision the classification of 'Activated Bentonite' has been held to be falling under Chapter 3802 for the period subsequent to 01.01.2007. Inasmuch as in the present appeal a part of period is subsequent to 01.01.2007. Revenue's stand of classification under Chapter 38 is upheld. However, the demand is assailed on the point of limitation by submitting that the show-cause notice issued in November 2008 by invoking the longer period of limitation, is barred.

4. As we have already seen the issue was not free from doubt and was the subject matter of litigation before the Tribunal, in which no malafide can be attributed to the assessee. Otherwise also the goods were cleared by the Customs authorities after examination, in which case appellant cannot be held guilty of any suppression. Accordingly, we hold that the part of the demand to be barred.

5. In view of the above, the impugned order is set aside and the appeal is allowed with consequential relief.

(Dictated & Pronounced in Court)

(Raju)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)