CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 87063 OF 2022

[Arising out of Order-in-Original No: 22/22-23/CC/NS-II/CAC/JNCH dated 29th June 2022 passed by the Commissioner of Customs (NS-II), Nhava Sheva.]

Superb Mineral India Pvt Ltd
D 59, MIDC Malegon, Sinner, Nashik- 422 103 … ***Appellant***

versus

Commissioner of Customs (NS-II)
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 87679 OF 2022

[Arising out of Order-in-Original No: 22/22-23/CC/NS-II/CAC/JNCH dated 29th June 2022 passed by the Commissioner of Customs (NS-II), Nhava Sheva.]

Commissioner of Customs (NS-II)
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707 … ***Appellant***

versus

Superb Mineral India Pvt Ltd
D 59, MIDC Malegon, Sinner, Nashik- 422 103 ***…Respondent***

APPEARANCE:

Shri Anupam Dighe and Shri Prathamesh Chavan, Advocates for the assessee-appellant

Shri Badhe Piyush Barasu, Deputy Commissioner (AR) for Revenue

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 85972-85973/2025

DATE OF HEARING: 21/11/2024
DATE OF DECISION: 13/05/2025

PER: C J MATHEW

M/s Superb Mineral India Pvt Ltd is before us with the grievance that denial of benefit of 'merchandise exports from India scheme (MEIS)' and confiscation of goods, covered by 33 shipping bills, under section 113(i) of Customs Act, 1962 for alleged mis-declaration, with consequent fastening of redemption fine under section 125 of Customs Act, 1962 as well as imposition of penalties under section 114 of Customs Act, 1962, in order[1] of Commissioner of Customs (NS-II), Nhava Sheva, are not tenable.

2. The appellant is an exporter of 'zeolite' mineral – which are essentially stones extracted from the earth and processed for aesthetic presentation - and had entered 76 packages of individual articles valued at ₹ 51,53,330, *vide* shipping bill 1470125/11.02.2017 on which intention of availing 'scrips' for ₹ 2,57,666 under the said scheme in the Foreign Trade Policy (FTP) had been declared, for clearance. From further investigation, 32 other shipping bills, similarly filed for export of goods valued at ₹ 23,54,96,000 between 1st May 2015 and 10th December 2017 on which 'scrips' for ₹ 71,54,100 had been issued under 'merchandise exports from

[1] [order-in-original no. 22/22-23/CC/NS-II/CAC/JNCH dated 29th June 2022]

India scheme (MEIS)' and another 22 shipping bills for export of goods valued at ₹ 92,41,41,000 between commencement of investigation and before issue of show cause notice, though with no claim under the said scheme, were brought within the proceedings; confiscation of the former with attendant order for redemption on payment of fine of ₹ 71,54,100 is source of grievance along with that on revocation of the 'scrips' already issued and utilized. Re-determination of value of the latter by recourse to Customs Valuation (Determination of Value of Export Goods) Rules, 2007 that was dropped by adjudicating authority is assailed in appeal of Commissioner of Customs.

3. Learned Counsel appearing for the exporter submitted that declaration of goods as 'zeolite' was not alleged to be inappropriate in the show cause notice and that, as each of the 76 packages contained uniquely shaped articles, drawal of sample of three, for determination of entirety of the 'live consignment' or from past clearances, was not sufficiently representative and, hence, not tenable. Reliance was placed on the decision of the Tribunal in *Commissioner of Customs, Central Excise & Service Tax, Calicut v. Jupiter Trading Company [2019 (369) ELT 1524 (Tri.-Bang.]*. It is also contended that the test results lacked credibility by failure to determine value which could not be overcome by relying upon into weight as criteria for extrapolation. The composition, as reported by the Deputy Chief Chemist (DyCC), was alleged to not suffice for classification of the goods and for which Learned Counsel placed reliance on decision of the

Tribunal in *Principal Commissioner of Customs (Preventive), New Delhi v. N & N Traders [(2024) 18 Centax 274 (Tri.-Del)]*. It is also submitted that the results submitted by Bombay Test House Private Limited merely reported conformity of the sample with 'natural zeolite' without any indication of the process by which the analysis had been carried out. It was further informed by the Learned Counsel that the impugned order was vague about the deposition of suppliers vis-à-vis conformity with samples drawn during investigation. He submitted that the goods were zeolite but not in a crude form in which extracted with further processing erasing it of amenability to description as 'zeolite in natural form' and the skilful craftsmanship, evident in cutting, trimming, removal of excrescences and stabilizing, application of acids and adhesive for assuring structural integrity, are manifest in the product so exported. According to Learned Counsel, these factors had not been taken into consideration by the adjudicating authority while ascertaining conformity with appropriate Revised Indian Trade Classification (RITC) code. He further submitted that the declared code, *viz*., 6815 9990 had been adopted by them in all their shipment even before the introduction of the scheme from which they derived the benefits and were never subject to question then by customs authorities. It was also submitted that the goods, covered by the earlier shipping bills against which 'scrips' had been issued, were not available for subjecting to confiscation and that malady haunted the goods impugned in the appeal of jurisdictional Commissioner of Customs for affirming proposal for confiscation in the show cause notice; reliance was placed on the decision of the Hon'ble Supreme Court in *Kothari Filaments v. Commissioner of Customs, Kolkata [2009 (233) ELT 289 (SC)]*. On behalf of respondent in the other appeal, it was submitted by Learned Counsel that the reliance upon value declared by other exporters was contingent upon determination that the goods were not processed and the evidence relied upon by the adjudicating authority to arrive at such conclusion for re-determination of RITC was already disputed to shift onus onto customs authorities to establish that the compared goods were identical not only in design but also in quantity for which he relied upon the decision of the Tribunal in *Sitaram Ramdhan & Co v. Commissioner of Central Excise, Jaipur [2015 (330) ELT 210 (Tri - Del)]*. It is also contended that the revision of value would have to conform to the principles set out by the Hon'ble Supreme Court in *Eicher Tractors Ltd v. Commissioner of Customs, Mumbai [2001 (1) SCC 315]*.

4. According to Learned Authorised Representative, the exporter had admitted to obtaining ineligible benefits under 'merchandise exports from India scheme (MEIS) scheme' by overvaluing the export goods and that the description corresponding to more appropriate code 255309099 was not entitled to the benefit thereof. It was also submitted that the persons from whom the goods were claimed to have been procured denied any connection with the samples drawn during investigation. He, therefore, contended that the adjudicating authority had erred in not rejecting the

declared value under rule 8 of Customs Valuation (Determination of Value of Export Goods) Rules, 2007. Furthermore, it was submitted that the decision of the Hon'ble High Court of Madras in *Visteon Automotive Systems India Ltd v. CESTAT, Chennai [2018 (9) GSTL 142 (Mad)]*, and followed by the Hon'ble High Court of Gujarat in *Synergy Fertichem Pvt Ltd v. State of Gujarat [2020 (33) GSTL 513 (Guj)]*, supported confiscation of goods not available physically. It was also submitted that the goods, exported between commencement of investigation and of the issue of show cause notice, had only been provisionally cleared and, therefore, law as settled by the Hon'ble High Court of Bombay did not apply thereto.

5. We find from the records that the proposals in the show cause notice pertaining to past and present shipments stemmed from investigation of a single shipping bill, comprising 76 packages, of December 2017 and the only ones available for evaluation of the appropriateness of code entered in the shipping bills on which 'scrips' had been issued. The shipping bills, pertaining to the live consignment as well as for the earlier consignments, were filed to enable assessment under section 17 of Customs Act, 1962 and, as pre-requisite for

> *'51. Clearance of goods for exportation.*
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> - *Where the proper officer is satisfied that any goods entered for export are not prohibited goods and the exporter has paid the duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance and loading of the goods for exportation.'*

of Customs Act, 1962, was, in the absence of any allegation of prohibition on export, limited to the determination of duty liability for which the 'rate of duty' under empowerment of section 12 of Customs Act, 1962 and 'value' as determinable by section 14 of Customs Act, 1962 are the foundation of pillars. Section12 of Customs Act, 1962 prescribes application of 'rate of duty' as are specified under the Customs Tariff Act, 1975 which, in section 2 therein, is from one or the other of the two Schedules with Second Schedule alone concerned with export goods. For the purpose of Second Schedule, the chapter headings and tariff item are identical to those set out in the First Schedule but restricted to such as specifically enumerated therein. On a perusal of the tariff, we find that only six items of chapter 20, though absent any of heading 2530, are enumerated therein; neither is there any entry from chapter 68 in Second Schedule of the Customs Tariff Act, 1975. In the absence of 'rate of duty' to be charged on value of exports, any exercise for determination of the latter is rendered immaterial in assessment under section 17 of Customs Act, 1962. Consequently, with assessment being superfluous without duty liability, section 51 of Customs Act, 1962 that empowers withholding of export goods only in circumstances of the appropriate duty liability not having been discharged or of the goods being prohibited has no bearing for initiation of action under Customs Act, 1962. There is no allegation that notification under section 12 of Customs Act, 1962 or any other law for the time being in force did prohibit export of 'zeolite' in any form. Confiscation of goods in the impugned order is without authority of law.

6. The case of the appellant for not rescinding 'scrips' for ₹ 71,54,100 issued, or against withholding of entitlement to 'scrips' for ₹ 2,57,166, under the 'merchandise exports from India scheme (MEIS)' of the Foreign Trade Policy rests upon the determination of eligibility solely by the Directorate General of Foreign Trade (DGFT) and of relevance to the 'proper officer' only upon furnishing for clearance of the imported goods in accordance with the appropriate notification issued under section 25 of Customs Act, 1962. There is no whisper of allegation in the show cause notice of any such imports having been effected either by the exporter or by any other individual to whom the said 'scrips' may been transferred; nor any computation of duty foregone thereby on identified imports. Consequently, in the absence of utilization of such 'scrips' - issued by another agency of the Central Government in exercise of its exclusive authority – scope for intervention by customs authorities is moot. No case has been made out that valuation, to be determined under the Customs Valuation (Determination of Value of Export Goods) Rules, 2007, would arise for determination of eligibility for 'scrip' as envisaged in the Foreign Trade Policy (FTP) or in the notification permitting utilization of 'scrips' towards liability to duty on imported goods. In any case, the impugned order had concluded that rejection of the declared value under rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 was pre-requisite for re-

determination thereof and dropped proposals in consequence.

7. The code upon which the entire case has been set is a stranger to the process of assessment under Customs Act, 1962 and to affirm that description corresponding to tariff item 2530 9099 of First Schedule to Customs Tariff Act, 1975 as more appropriate to the export goods than that corresponding to code 6815 9990 is not only comparison of incomparable but lacking authority of law inasmuch as the General Interpretative Rules appended to Customs Tariff Act, 1975, which guide the emplacement of articles against respective headings and sub-headings of tariff items, is specific not only to each Schedule exclusively but also restricted to such enumerations as are there in the Second Schedule to Customs Act, 1962. Consequently, as far as export goods is concerned there is no scope for applying either the Rules or the enumerations in the Schedules for disallowance of eligibility arising from consequence of goods exported that are not established as not conforming to description claimed in the shipping bills.

8. That the goods are 'zeolite' is not in dispute and the only issue that remains in contention is the claim of exporter that 'zeolite' has been subject to further processing to form articles. The show cause notice has not taken into account the submissions made by the appellant about the manner in which the export goods differ from extracted natural 'zeolite' as well as

the process of trimming which gives desired shape and designed as 'collectors' item ready to be deployed for retail sale at the time of export. In the absence of such appreciation, the attempt by customs authorities to reject the declared ITC(HS) code is incorrect and without jurisdiction. On the basis of our finding *supra,* we find no merit in the appeal of Revenue and the determination to detriment of the exporter in the impugned order is without authority of law.

9. Accordingly, we allow the appeal of M/s Superb Mineral India Pvt Ltd while dismissing the appeal of Commissioner of Customs (NS-II), Nhava Sheva.

(Order pronounced in the open court on 13/05/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*