# CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

## WEST ZONAL BENCH

## CUSTOMS APPEAL NO: 87902 OF 2019

[Arising out of Order-in-Original No: 13/2019-20/Commr/NS-I/JNCH dated 09th May 2019 passed by Commissioner of Customs (NS-I), Nhava Sheva.]

**Dow Chemical International Pvt Ltd**
1st Floor, Block B, 02 Godrej Business District
Pirojsha Nagar, LBS Marg, Vikhroli (W)
Mumbai-400079 … ***Appellant***

*versus*

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

*APPEARANCE:*

Shri Saurabh Dixit, Advocate for the appellant

Shri Jitesh Jain, Joint Commissioner (AR) for the respondent

**CORAM:**

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

**FINAL ORDER NO: 86386/2025**

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| DATE OF HEARING: | 01/04/2025 |
| DATE OF DECISION: | 30/09/2025 |

*PER: C J MATHEW*

In this appeal, M/s Dow Chemical International Pvt Ltd assails demand of differential duty of ₹ 1,66,19,026 under section 28(1) of Customs Act, 1962 for having been short-paid in 60 bills of entry filed for import of 424.21 metric tons of 'Dowsil 983 structural glazing sealant' and 'Dowsil silicone insulating glass sealant' between 5th February 2018 and 26th July 2018. The order[1] of Commissioner of Customs (NS-I), Jawaharlal Nehru Custom House, Nhava Sheva, while affirming proposed revision of applicable rate of duty from that corresponding to tariff item 3910 0090 of First Schedule to Customs Tariff Act, 1975 to that corresponding to tariff item 3214 1000 of First Schedule to Customs Tariff Act, 1975, re-evaluated the factual matrix for discard of proposal to invoke section 28(4) of Customs Act, 1962 with detriments appended thereto and, by invoking section 28(10B) of Customs Act, 1962 for appropriate substitution with consequences, excused them from confiscation and penal consequence. The proceedings were occasioned by detailed examination of two consignments imported against bills of entry no. 7252672/17.07.2018 and no. 7278062/19.07.2018 that were reported by customs authorities to be incorrectly classified. No appeal has been filed against dropping of proposals.

2. Learned Counsel for the appellant submitted that, despite pleadings in personal hearing before the adjudicating authority on reports by the Central Revenue Control Laboratory (CRCL) of representative samples

[1] [order-in-original no. 13/2019-20/Commr/NS-I/JNCH dated 9th May 2019]

consignments imported against four bills of entry in the past in like circumstances of doubt following which classification remained untouched and furnishing of two of such, credence was accorded to inexpert opinion on technical distinction merely from 'technical data sheet' purportedly drawn from the web-site of the corporate group. He contended that the impugned order had not controverted likeness of the impugned goods with those that had been cleared earlier after testing. It is on record that the samples of the impugned consignments had not been drawn and, consequently, test reports had not guided the adjudicating authority.

3. Learned Authorized Representative drew upon the scientific exposition in the impugned order and the significance of the Explanatory Notes for heading 3214 in the Harmonized System of Nomenclature (HSN) with particular reference to the superfluity of 'onsite' deployment of 'hardener' which appellant contended to be significant in determination of appropriate description.

4. Notwithstanding the elaborate arguments in support of the rival contentions, we find ourselves reflecting on the adequacy of reasons for disturbance of the declared classification by the original authority to suffice as comprehensive adjudication. We note that the impugned order, by concatenation of 'technical data sheet (TDS)' and Explanatory Notes *supra* that placed emphasis on test of undoubted usage as touchstone for classification therein even without the essential element added at the time

of use. We also note that additional authority was drawn from

> *'(a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article.'*

in rule 2 of General Rules for Interpretation of the Import Tariff appended to Customs Tariff Act, 1975.

5. While the appellant pressed for affirming the claim for being assessed to duty applicable to

> *'Silicone, in primary form'*

corresponding to heading 3910 of First Schedule to Customs Tariff Act, 1975 excluding in 'resin' and 'oil' form, the assessment was re-determined by application of duty applicable to 'other mastics' together with others in

> *'Glaziers' putty, grafting putty, resin cements, caulking compounds and other mastics;'*

corresponding to sub-heading 3214 10 of First Schedule to Customs Tariff Act, 1975, extended further as tariff item in entirety, even as it was not disputed that the composition of the impugned goods was silicone-based. Here is the first of the aspects that should have guided resolution of the dispute but find to have been unaddressed in the impugned order and, thus, hampering ascertainment of being legal and proper. 'Silicone' has been placed in a group designated as 'Plastics and Articles thereof; Rubber and articles thereof' constituting section VII of the First Schedule to the Customs Tariff Act, 1975 while 'mastics' are, doubtlessly, indistinguishable from the group comprising 'Products of Chemical and Allied Industries' designated as section VI of First Schedule to Customs Tariff Act, 1975. While these may not, of themselves, be relevant for classification, the intent of classification is highlighted and should influence the logic of deriving the appropriate classification; by placement in a subsequent group, as a plastic, silicone acquires its own identity and, while the addition of a critical substance, such as 'hardener' at time of use may produce an article that may, and plausibly, regress to being a product allied to chemical industry, assigning of particular placement to 'silicone' cannot be wished away. The claim of imported goods to be 'silicone' in primary form, a 'broad spectrum' nomenclature, may be displaced only with expert opinion on the nature of the goods. That is lacking.

6. The rules of engagement for substitution of tariff item is premised on independent adherence of impugned goods to the proposed description. As to conformity of impugned goods to 'mastic', it did not suffice to rely on the 'technical data sheet (TDS)' on the corporate website but also from determination of processing beyond primary form of silicone that may be necessary for transformation as 'mastic'; the adjudicating authority drew upon unprovenanced inspiration to conclude that addition of 'hardener' alone was necessary to render the imported goods ready for consumption at user end. This lack, arising from non-recourse to expert opinion, impacts

credibility of findings upon which re-assessment was ordered. To the exclusion of all other guiderails for enabling appropriate classification, the adjudicating authority has relied upon Explanatory Notes *supra* and rule 2(a) of General Rules for Interpretation of the Import Tariff appended to Customs Tariff Act, 1975 without paying heed to

> *'Glaziers' putty, grafting putty, resin cements, caulking compounds and other mastics;'*

in rule 1 of General Rules for Interpretation of the Import Tariff appended to Customs Tariff Act, 1975. For the proposition in the show cause notice to be validated, note in chapter 39 should have set out some degree of resemblance to 'mastic' as threshold for exclusion of 'silicone' from 'primary form'; the lack thereof casts doubt on the generality of 'mastics' as excluding the impugned goods from the embrace of the description corresponding to tariff item 3910 of First Schedule to Customs Tariff Act, 1975.

7. Note 3 in chapter 39 of First Schedule to Customs Tariff Act, 1975 specifies that heading 3910 is for goods 'produced by chemical synthesis' and the description specifies coverage to be contingent upon presentation in primary form for clearance. Note 6 in chapter 39 of Customs Tariff Act, 1975 elaborates upon the several forms that 'primary' includes. For ascertainment of comparative preference for fitment, the re-assessment should have been preceded by unprejudiced verification of declared classification in terms of description and the notes; there is nothing on

record to conclude that such ascertainment was carried out. Recourse to rule 3 of General Rules for Interpretation of the Import Tariff appended to Customs Tariff Act, 1975 is premised upon diligent and comprehensive ascertainment for fitment followed by justified order of ranking. This is patently lacking in the findings.

8. In the light of the adjudication being, as we have set out *supra*, incomplete, we are unable to decide on ascertained description as legal and proper. In these circumstances, we set aside the impugned order and remand determination back to the original authority with direction to subject the proposal in the show cause notice to strict ascertainment from the rival headings, notes in the respective chapters and *Explanatory Notes* in the Harmonized System of Nomenclature (HSN), to the extent available. It would also be advisable to subject to goods to testing and, if that not be possible, for the adjudicating authority to dispose off the plea *re* previous test reports.

9. Accordingly, the appeal is disposed off by way of remand.

*(Order pronounced in the open court on 30/09/2025)*

**(AJAY SHARMA)**
***Member (Judicial)***

**(C J MATHEW)**
***Member (Technical)***

**/as*