CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 5

Customs Appeal No. 87337 of 2023

[Arising out of Order-in-Appeal No. 720(Gr.I&IA)/2023(JNCH)/Appeals dated 12.07.2023 passed by the Commissioner of Customs (Appeals), JNCH, Nhava Sheva, Mumbai Customs Zone-II.]

Omya India Private Limited **.... Appellants**
22, C/o Supply Junction, Unit-III
S. No.47/4, Parivali Village
Wada Road, Bhiwandi
Maharashtra – 421 302.

Versus

Commissioner of Customs (NS-I) **.... Respondent**
Nhava Sheva Customs Commissionerate-I
Jawaharlal Nehru Custom House (JNCH)
Nhava Sheva, Taluka Uran, District Raigad
Maharashtra – 400 707.

APPEARANCE:

Shri Bhavik Thanawala, Chartered Accountant for the Appellants

Shri K.M. Azad, Authorized Representative for the Respondent

FINAL ORDER NO. A/85767/2026

Date of Hearing: 29.04.2026
Date of Decision: 23.06.2026

Per: M.M. PARTHIBAN

This appeal has been filed by M/s Omya India Private Limited, Bhiwandi (herein after, referred to as "the appellants", for short) assailing the Order-in-Appeal No. 720 (Gr.I&IA) /2023(JNCH)/Appeals dated 12.07.2023 (herein after, referred to as "the impugned order") passed by the Commissioner of Customs (Appeals), JNCH, Nhava Sheva, Mumbai Customs Zone-II.

2.1 Brief facts of the case, leading to this appeal, are summarized herein below:

2.2. The appellants herein is *inter alia* engaged in the manufacture and distribution of industrial minerals and chemical compounds used in paper, plastics, paints and coatings industry. For the purpose of import and clearance of the goods described as 'Burgess Calcined Aluminium Silicate', from the overseas supplier M/s Burgess Pigment Company, Sandersvile, Georgia, USA, the appellants had filed the Bill of Entry (B/E) No. 9047477 dated 03.10.2020 by classifying the goods under Customs Tariff Item (CTI) 2507 0029 and claimed the benefit of duty exemption vide Serial No.120 of Notification No.50/2017-Customs dated 30.06.2017. The imported goods were subjected to First Check examination, and the representative samples were drawn and sent to the Deputy Chief Chemist (DYCC) of the Central Revenue Control Laboratory (CRCL) at Nhava Sheva. On ascertaining the test results of the sample indicating that the imported goods are 'composed of aluminium silicate along with trace amount of Titanium, Calcium and Iron (Calcined Clay) and it is processed', the department had proposed for revising the classification of the said goods under CTI 2839 9090.

2.3 Since, the appellants importer needed the impugned goods urgently to meet out the pending orders of their customer, they had requested the department for waiver of show cause notice and personal hearing for ordering the re-assessment and for clearance of the goods. The Assistant Commissioner of Customs, Appraising Group I&IA, Nhava Sheva-I Customs Commissionerate, as the original authority, based on the waiver of show cause notice and personal hearing went ahead in passing an Order-in-Original dated 08.12.2020 in rejection of the declared classification of the imported goods under CTI 2507 0029 and revised the self-assessment made by the appellants importer by re-determining the classification of impugned goods under CTI 2839 9090. On such re-assessment the appellants also paid the differential duty, and got the goods cleared from the customs control. However, being aggrieved with the said order of the original authority, the appellants had filed an appeal before the Commissioner of Customs (Appeals). In disposing of the appeal, learned Commissioner of Customs (Appeals) vide Order-in-Appeal dated 12.07.2023 by upholding the order of the original authority, had rejected the appeal filed by the appellant. Feeling aggrieved with the said order passed by the Commissioner of Customs (Appeals), which is impugned herein, the appellants have filed this appeal before the Tribunal.

3.1 Learned Chartered Accountant appearing for the appellants stated that the imported goods are commercially knows as 'Kaolin clay' or 'China clay' and is commonly used as a filler and extender in paints, coatings, plastics industry and for PVC compounds. They had also got the verification letter from their overseas supplier which clearly states that the imported goods are natural Aluminium silicate [$Al_2 (OH)_4 Si_2 O_5$] obtained through physical treatment and calcination. It is further explained by the overseas supplier that the product is manufactured by washing, spray drying and calcining natural Kaolin clay, in order to enhance the brightness and performance without chemically altering the substance. He further stated that however, the departmental authorities did not examine these aspects and on the basis of test result of the samples had re-determined the product classification under CTI 2839 9090.

3.2 Learned Chartered Accountant in support of the above plea, relied upon the judgement of the Hon'ble Supreme Court in the case of *Commissioner of Customs & Central Excise Vs. 20 Microns Limited* - 2015 (324) E.L.T. 14 (S.C.).

4. Learned Authorised Representative (AR) reiterated the findings made by the Commissioner of Customs (Appeals) in the impugned order.

5. We have heard both the learned Chartered Accountant appearing for the appellants and the learned Authorized Representative of the Department and perused the case records and the synopsis given in the form of written submissions.

6. We find that the issue under dispute for consideration before us is the determination of proper classification of the impugned goods, either under CTI 2507 0029 as claimed by the appellants, or, under CTI 2839 9090 as determined by the department and upheld in impugned order, for the purpose of determining appropriate duty of customs payable thereon.

7.1 As regards the issue of dispute in classification, in the case before us, the contending classification of imported goods discussed in the impugned order are either under CTI 2507 0029 or CTI 2839 9090 of the First Schedule to the Customs Tariff Act. Thus, it is clear that at the Chapter level itself, there is a difference of opinion among the department and the appellants. The dispute in classification therefore lies in the narrow compass of analysis of the appropriate chapter headings and the relevant sub-headings under which the impugned goods are covered as per the Customs Tariff and then classifying the impugned product under the corresponding tariff entry. The relevant entries of the above two contending classification are as follows:

C/87337/2023

"SECTION V
MINERAL PRODUCTS

CHAPTER 25
Salt; sulphur; earths and stone; plastering materials, lime and cement

Notes:

1.Except where their context or Note 4 to this Chapter otherwise requires, the headings of this Chapter cover only products which are in the crude state or which have been washed (even with chemical substances eliminating the impurities without changing the structure of the product), crushed, ground, powdered, levigated, sifted, screened, concentrated by flotation, magnetic separation or other mechanical or physical processes (except crystallization), but not products that have been roasted, calcined, obtained by mixing or subjected to processing beyond that mentioned in each heading.

The products of this Chapter may contain an added anti-dusting agent, provided that such addition does not render the product particularly suitable for specific use rather than for general use.

xxx xxx xxx xxx xxx

3.Any products classifiable in heading 2517 and any other heading of this Chapter are to be classified in heading 2517.

xxx xxx xxx xxx xxx

Tariff Item	**Description of goods**
(1)	(2)
2507	**Kaolin and other kaolinic clays, whether or not calcined**
2507 00	*- Kaolin and other kaolinic clays, whether or not calcined :*
2507 0010	--- Crude
	--- *Other :*
2507 0021	---- Pharmaceutical grade
2507 0022	---- Ceramic grade
2507 0029	---- Other

And

[CHAPTER 28

Inorganic chemicals; organic or inorganic compounds of precious metals, of rare-earth metals, of radioactive elements or of isotopes

Notes:

1.Except where the context otherwise requires, the headings of this Chapter apply only to :

(a) separate chemical elements and separate chemically defined compounds, whether or not containing impurities;

xxx xxx xxx xxx xxx

Tariff Item	**Description of goods**
(1)	(2)
2839	**Silicates; commercial alkali metal silicates**
	- Of sodium :
2839 1100	--- Sodium metasilicates
2839 1900	-- Other
2839 90	*- Other*
2839 9010	--- Magnesium trisilicate
2839 9090	--- Other

THE FIRST SCHEDULE – IMPORT TARIFF *(Refer Section 2)*
THE GENERAL RULES FOR THE INTERPRETATION OF IMPORT TARIFF
Classification of goods in this Schedule shall be governed by the following principles

1.The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:…."

7.2 On careful reading of the above tariff entries and by applying the General Interpretative Rules (GIR), particularly Rule 1, the position is made clear that Customs Tariff Heading (CTH) 2507 covers all types of Kaolin and other kaolinic clays, calcined clay irrespective of whether calcined or not, to the extent these were subjected to various processes as mentioned in the Chapter Note No.1. It also included the Kaolin of pharmaceutical grade, chemical grade and other types.

7.3 Whereas the scope of tariff entry under CTH 2839 is to cover the separate chemical elements and separate chemically defined compounds, such as silicates and alkali metal silicates. This include Sodium metasilicate, magnesium metasilicate and other silicates.

7.4 We also find that the overseas supplier vide letter dated 06.11.2020 had furnished the details of the impugned product as follows:

> *"Kaolin clay, Aluminium silicate, is a naturally occurring mineral with formula [$Al_2\,(OH)_4\,Si_2\,O_5$]. Burgess Pigment's kaolin clays are all mined from highly pure, sedimentary deposits. These natural deposits have formed over millions of years, as feldspar thermally degraded in the presence of water to eventually form kaolin. This soft, white mineral is used in thousands of application around the world and has been for centuries. Kaolin clays are generally recognized as safe (GRAS) and have many application in FDA sensitive applications.*
>
> *The naturally occurring mineral contains oxides including Fe_2O_3, TiO_2, K_2O and others. The crystalline structure of kaolin clay and the naturally occurring stacks trap these trace oxides in the lattice structure preventing them from being removed. These oxides will not be removed in crude washing and grinding processes. At no point in the Burgess processes are additional miners added or blended. Burgess No. 30 is 100% the original kaolin less some portion of crystalline silica and other contaminants removed during processing."*

7.5 The departmental/CRCL chemical test result in the impugned product had reported as follows:

"The sample is in the form white fine powder. It is mainly composed of aluminum silicate along with trace amount of Titanium, Calcium & Iron. (Calcined Clay). It is processed. Sealed remnant returned."

7.6 On plain reading of the aforesaid factual aspects contained in the overseas supplier's product information and the chemical test result, it clearly transpires that the impugned goods are composed of aluminum silicate; however, these are "calcined clay". The trace amount of elements do not contribute to a significant factor in classification of this goods. In terms of the Chapter Note 1 Kaolin clay, when washed (even with chemical substances eliminating the impurities without changing the structure of the product), crushed, ground, powdered, levigated, sifted, screened, concentrated by flotation, magnetic separation or other mechanical or physical processes (except crystallization), remain classified under the respective heading of chapter 25. Further, when such products are roasted, calcined, obtained by mixing or subjected to processing for the purpose eliminating the impurities would also remain within the chapter 25. Further, no where in the chemical test report it is mentioned that the impugned goods are of separate chemical elements or separate chemically defined compounds, for meriting the classification of goods under chapter 28. Therefore, we are of the considered view that the impugned goods would be appropriately classifiable under CTI 2507 0029, and not under the CTI 2839 9090 as determined in the order of the original authority which was upheld in the impugned order.

8.1 On examination of the factual matrix of the present case, we find the disputed issue involved in the present case before this Bench, has been examined in the context of Chapter Note 1 of Chapter 25 by the Hon'ble Supreme Court in the case of *20 Micros Limited* (supra). In the said case, it was held by the Hon'ble Supreme Court that the product Kaolin Clay/ China clay calcined, is classifiably under chapter heading 2505.

8.2 The relevant paragraphs of the said judgement are extracted and given below:

"*10. In the aforesaid Note, after mentioning the products, there is again an exclusion clause which excludes the products that have been roasted, calcined or obtained by mixing. Calcination was excluded there as well. However, when this Head Note is contrasted with Head Note 2 which was introduced in the year 1990, we find significant addition of words in the beginning of the said Note which are "except where the context otherwise requires". Therefore, the exclusion of calcination* *would not apply in respect of those products where the context otherwise includes calcination. Chapter Heading 25.05 which has already been reproduced above mentions under Entry 2505.10 "Kaolin and other kaolinic clays, whether or not calcined". It is not in dispute that the china clay otherwise is known as Kaolin as well and the process of Kaolin is same as that of china clay. Here the Kaolin is included under Entry 2505.10, i.e., under Chapter Heading 25.05, even when it is calcined. Therefore, it follows from the above that the context here requires such a product to remain included under Chapter 25.05 even when it is calcined. We find that the amended/new provision in the form of Chapter Note 2 as well as Entry 25.05 was made to bring it in tune with HSN Notes which have been produced for our perusal.*

11. Chapter Note 1 of Chapter 25 of HSN Notes, which deals with mineral products is as under : -

> *"1. Except where their context or Note 4 to this Chapter otherwise requires, the headings of this Chapter cover only product which are in the crude state or which have been washed (even with chemical substances eliminating the impurities without changing the structure of the product), crushed, ground, powdered, levigated, sifted, screened, concentrated by flotation, magnetic separation or other mechanical or physical processes (except crystallisation), but not products which have been roasted, calcined, obtained by mixing or subjected to processing beyond that mentioned in each heading."*

12. Likewise, Chapter Heading 25.07 of HSN Notes which deals with Kaolin and other Kaolinic clays specifically mentions "whether or not calcined" as is clear from the reading of the same and we reproduce it hereunder : -

> *"25.07 - Kaolin and other Kaolinic Clays, whether or nor calcined.*
>
> *This heading covers kaolin and other kaolinic clays, the main constituents of which are kaolin minerals such as kaolinite, dickite and nacrite, anauxite, and halloysite. Such clays remain in the heading even when calcined.*
>
> *Kaolin, also known as China clay, is a high grade, white or nearly white clay used in the porcelain and paper-making industries. Kaolin-bearing sands are excluded (Heading 25.05)."*

13. From the aforesaid discussion, it becomes clear that merely because the product of assessee, i.e., China Clay is calcined, it would not put it out of Chapter Heading 25.05."

9. In view of the above discussions and analysis of the factual matrix of the case, and on the basis of the judgement delivered on 08.09.2015 by the Hon'ble Supreme Court in the case of *20 Micros Limited* (supra), we are of the considered opinion that the matter is no more *res integra*. Accordingly, we find that the impugned order upholding the classification of impugned goods contrary to the above, does not stand the scrutiny of law.

10. In the result, the impugned order is set aside and the appeal is allowed in favour of the appellants.

(Order pronounced in open court on 23.06.2026)

(AJAY SHARMA)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha