IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH – COURT NO.2

Customs Appeal No.86531 of 2017

(Arising out of Order-in-Original No.16/KVSS(16)ADG(ADJ)/DRI,MUMBAI/2016-17 dated 21.03.2017 passed by Additional Director General (Adjudication),DRI, Mumbai)

M/s JSW Steel Limited
[JSW Centre, Bandra Kurla Complex, Bandra (East), Mumbai-400061]

Appellant

VERSUS

Additional Director General,DRI (Adjudication), Mumbai
(Old Building, 2nd Floor, New Customs House, Ballard Estate, Mumbai-400001)

Respondent

APPERANCE :

S/Shri Vipin Kumar Jain, Ambarish Pandey & Kshitij Awasti, all Advocates for the Appellant
Shri Arvind K.Singh, Special Counsel for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.P.ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 86061/2026

DATE OF HEARING : 23 APRIL 2026

DATE OF PRONOUNCEMENT : 17 AUGUST 2026

Per Ashok Jindal :

The appellant is in appeal against the impugned order wherein demand of Customs duty of Rs.18,91,64,158/- along with interest has been confirmed and redemption fine of Rs.30,00,000/- and penalty of Rs.1,80,00,000/- under Section 112(a) of the Customs Act,1962, was imposed on the appellant.

2. The facts of the case are that the Appellant is engaged in the manufacture of iron and steel products, for which purpose, it has been regularly importing Magnesia Carbon Brick by classifying the same under CTH 6902, which specifically covers the Subject Goods by the

Description-"*Magnesia Carbon Bricks and shapes*". The Appellant was availing benefit of concessional rate of Basic Customs Duty (BCD) in terms of Sr. No. 304 of Notification No.12/2012-Cus. dated 17.03.2012.The relevant entry of the said Notification reads as under:

Sr. No.	Chapter or Heading	Description	Standard Rate
304.	6902 or 6903	All goods	5%

2.1 According to the evidence on record, the subject Goods were obtained from Magnesite, which is a naturally occurring rock. The said Rock was mined and thereafter such shaped Magnesite was subjected to a two-stage process. The first stage involved firing of Magnesite ($MgCO_3$ – carbonate of magnesium) at 1500-1800°C to obtain Magnesia (MgO – oxide of magnesium) i.e. dead burnt magnesite. In the second stage, Magnesia and Graphite were blended with resin as a binding material, which resulted into formation of a composite material called Magnesia Carbon (MgO-C). Magnesia Carbon was thereafter pressed in a pressing machine to achieve the desired shape of a brick, and the resultant bricks are fired at a temperature of around 180 -350°C to form Magnesia Carbon bricks i.e. the Subject Goods. The adoption of the aforesaid process comes clearly from the statements of suppliers of the Appellant, recorded during the course of investigation.

2.2 The Directorate of Revenue Intelligence, Chennai Zonal Unit ("DRI"), on the basis of suspicion that 'unfired' Magnesia Carbon Bricks were being imported by mis-classifying them under CTH 6902, as against the correct classification under CTH 6815, initiated an investigation and alleged that the said importers were wrongly availing benefit of concessional rate of BCD in terms of Sr. No. 304 of Notification No.12/2012-Cus. dated 17.03.2012.

2.3 On completion of investigation, the Appellant was issued two Show Cause Notices alleging that the Subject Goods imported by the Appellant were not classifiable under the CTH 6902 as they did not meet with the condition of Chapter Note 1 of Chapter 69 of Custom Tariff in India read with the HSN Explanatory Notes, as per which, for a product to fall under Chapter 69 the same must necessarily be fired after shaping and the extent of firing should be a minimum of 800°C, which condition was not fulfilled in the present case.

2.4 The Appellant furnished it replies to the Show-cause notices, *inter-alia*, contending that:

(a) The requirement of firing is not applicable to goods classifiable under CTH 6901-6903 of Customs Tariff in India and that the HSN Explanatory Notes would not be applicable for deciding classification, as the HSN was not fully aligned with the Customs Tariff in India, inasmuch as under the Customs Tariff in India, a specific entry viz. Magnesia Carbon Bricks and Shapes existed at the 8-digit level (Tariff Item 69021040), which was conspicuously absent both in the HSN as well as HSN Explanatory Notes, revealing a clear legislative intent to classify Magnesia Carbon Bricks under CTH 6902; and

(b) In any case, the stipulation in HSN Explanatory Notes regarding firing above 800°C applied to ceramic products classifiable under CTH 6904 to 6914 in sub-chapter II of Chapter 69 and did not apply to refractory products classifiable under CTH 6901-6903 in sub-chapter I of Chapter 69. Alternatively, the condition of firing at 800°C or more was not applicable to ceramic products obtained from Rock, fired after shaping, and was applicable only to ceramic products obtained by firing inorganic, non-metallic material which had been prepared and shaped previously at, in general, room temperature.

2.5 The Adjudicating Authority, vide Order-in-Original dated 21.03.2017, Ld. Adjudicating Authority confirmed the allegations levelled in the Show-cause notices. The reasons underlying the Impugned Order are as under:

(i) The entry of the articles in Chapter 69 require therein a mandatory phenomenon of 'firing' or heating to a temperature not less than 800 ° C, which is not fulfilled in the present case;

(ii) The term 'Firing' has not been defined in the Customs Tariff and hence recourse has to be taken to Explanatory Notes to Chapter 69 in WCO-HSN, which provides that articles heated to temperatures less than 800 °C for purposes such as curing of resins, accelerating hydration reaction or for removal of water are not considered to be fired for the purpose of Chapter Note 1;

(iii) The statements of the experts/technical persons clearly indicate that the raw material for manufacture of Subject Goods is fused magnesite or dead burnt magnesite obtained from magnesite ore;

(iv) Chapter Note 1 to Chapter 69 applies to the entire chapter. Although the extent of firing is not specified in Customs Tariff, the same is expressly provided for in the HSN. Undisputedly, the subject goods are heated below the threshold limit of firing i.e. 800 ° C;

(v) The duty evasion in present case has come to limelight even for the period beyond the period of limitation. The amended Section 28 enables the Revenue to initiate recovery proceedings for up to two years and hence, the issuance of SCN proposing recovery of amounts for up to two years is justified.

2.6 Being aggrieved with the said order, the appellant is before us.

3. The ld.Counsel for the appellant submitted that the finding that Note 1 to Chapter 69 and the General Notes to HSN provides that for a product to be classified under Chapter 69, it has to be fired after shaping at 800°C or more and that all the articles which are heated to a temperature less than 800°C for purposes such as curing of resins, accelerating hydration reactions, or for removal of water or other volatile components, are not considered to be fired for purposes of Chapter Note 1 and stand excluded from Chapter 69, overlooks that the Customs Tariff in India and the HSN are not fully aligned. It is relevant to note that during the relevant period, the Customs Tariff in India did not contain a stipulation to the effect that articles heated to temperatures less than 800°C are not considered to be 'fired' and are excluded from Chapter 69. Such a clause has been inserted by the

legislature in the Customs Tariff in India only with effect from 01.01.2022. Also, the Indian Legislature has, by departing from the 6-digit classification adopted in the HSN, provided for tariff items at the 8-digit level, which specify the particular articles that the Legislature seeks to tax. In light of the same, the heading and sub-heading have to be interpreted considering the specific Tariff Item inserted by the Parliament.

3.1 It is further submitted that during the relevant period, the requirement of firing at 800°C or more was not a pre-condition for goods to be classified under Chapter 69 is also evident from Tariff Item 6903 9040, which specifically covered Monolithics/castables, which are commercially understood as unfired and unshaped articles. Thus, the HSN and the Customs Tariff in India were at variance during the relevant period and hence, the General Notes to the HSN could not be applied for interpretation of an entry in Customs Tariff in India, as has been held by Hon'ble Supreme Court in the case of Camlin Ltd. vs. CCE, 2008 (9) TMI 1 - Supreme Court. This position has not been disputed in the Impugned Order

3.2 Further, he submits that even with respect to the goods in question, which are specifically by name covered by Tariff Item 69021040, the same cannot be technologically or commercially be fired at a temperature of 800°C or more, as has been explained by Mr. Sahu, Assistant Executive Director (R&D), OCL India Ltd. a supplier of the Appellant, to the effect that if the Magnesia is fired at temperatures more than 800° C, during the manufacturing itself, the carbon particles in the bricks start oxidizing, thereby reducing the strength of the brick. The said question is reproduced herein below:

> *"Q. Please state as to why the Magnesia Carbon bricks are not fired to more than 800° C during manufacture?"*
>
> *A. If Magnesia Carbon bricks are fired to more than 800°C, during manufacturing itself, the carbon particles oxidise giving low strength to the bricks and the purpose of carbon incorporation for getting higher life during application is no more there."*

3.3 He further submits that no material has been brought on record to prove that there can be any other variety of Magnesia Carbon Bricks which are fired at temperature of 800°C and above. This being the undisputed position and there being no evidence or allegation to the contrary, it is clear that Magnesia Carbon bricks cannot be obtained by firing at temperatures above 800° C. Therefore, the finding that for an article to be classified under CTH 6902, the Subject Goods have to be fired at 800° C or more is a clear impossibility, which itself demolishes the proposition that for any product to be classifiable under Chapter 69, it has to mandatorily be fired at 800° C or more. In any case, the condition of firing does not apply to the goods specified in sub-chapter I of Chapter 69 i.e. Headings 6901-6903.

3.4 Further, he submits that the Impugned Order has failed to take cognisance of the fact that Chapter 69 has two sub-chapters, while sub-chapter 1 covers articles under CTH 6901 to 6903, sub-chapter II covers articles under CTH 6904 to 6914. In this context, the Appellant submits that the requirement of firing applies only in respect of ceramic products covered by sub-chapter II of Chapter 69 and not to sub-chapter I of Chapter 69, under which the Subject Goods are classified. This is evident from a reading of Note 1 to Chapter 69:

> *"This Chapter applies only to ceramic products which have been fired after shaping. Headings 6904 to 6914 apply only to such products other than those classifiable in headings 6901 to 6903."*

(Emphasis supplied)

A perusal of the above Chapter Note would make it clear that the stipulation regarding firing after shaping applies only to such ceramic products which are classifiable under CTH 6904 to 6914.

3.5 It is further submitted that if the condition of firing after shaping was applicable to all ceramic products under Chapter 69, there would have been no warrant for the second sentence which reads, "Headings 6904 to 6914 apply only to such products other than those classifiable in headings 6901 to 6903". It is thus evident that the requirement of firing after shaping applies only to ceramic products classifiable under CHT 6904 to 6914 and not to products classifiable under CTH 6901 to 6903. It is a settled law that the entries in the Customs Tariff have to be read and construed literally and harmoniously and it is impermissible to read in what does not exist or is clearly not mentioned in the Tariff entries. He submits that even if Chapter Note 1 of Chapter 69 is applicable, there is no stipulation that firing has to take place at 800°C or more for all the ceramic products to be classified under Chapter 69.

3.6 It is further submitted that the Subject Goods imported by the Appellant have admittedly been fired. There is no stipulation in Note 1 to Chapter 69 of Customs Tariff in India to the effect that for the product to be classifiable under sub-chapter I, it has to be fired at temperature of 800° C or more. Therefore, even heating at temperatures ranging from 180-350° C would be considered as firing.

3.7 The fact that Subject Goods were fired at 250-350° C is evident from process write up furnished during investigation by one of the five suppliers viz., RHI India Pvt. Ltd., wherein the process of heating as firing at temperatures 250-350 °C has been referred to as process of firing. The fact that Subject Goods were fired to 250-350 °Chas also been admitted by the Adjudicating Authority in the Impugned Order. Therefore, there being no dispute the Subject Goods were fired at 250-350°C, and thus the requirement, if at all present in Chapter Note 1 of '*firing after shaping*', stands satisfied. Even the suppliers of the Appellant have admitted that the Subject Goods are fired at temperatures ranging up to 300°C. For ease of reference, a tabulation of the statements of the suppliers recorded by the Revenue during the course of investigation, stating the degree of firing is marked and enclosed as Annexure-1.

3.8 It is further submitted that in the absence of any criterion laid down either in the Customs Tariff in India or in any technical literature indicating that Firing has to mandatorily take place at any particular temperature, it was impermissible to hold that the ceramic products in Chapter 69 of Customs Tariff in India would be considered as fired only if the same have been heated at 800° C or more. Even as per HSN Explanatory Notes, firing at 800°C or more does not apply to ceramic products obtained from Rock.

3.9 Further, he submits that the HSN Explanatory Notes themselves have drawn a clear distinction between ceramic products obtained through the following two processes mentioned in the General Notes:

(i) By firing inorganic, non- metallic materials which have been prepared and shaped previously at, in general, room temperature. Raw materials comprise, inter alia, clays, siliceous materials, materials with a high melting point, such as oxides, carbides, nitrides, graphite or other carbon, and in some cases binders such as refractory clays or phosphates;

(ii) From rock (e.g. steatite), fired after shaping.

It can be seen from the aforesaid extract of the General notes of HSN that the requirement of firing at 800°C or higher applies only to products in Paragraph A, which reads thus-

> "The manufacturing process of the ceramic products referred to in paragraph (A) above (whatever their constituent material) comprises the following main stages:
>
> A.Preparation of the paste (or body);
>
> B.Shaping
>
> C.Drying the resulting articles
>
> D.Firing

(i) In this operation, the "green ware" is heated to a temperature of 800 ℃ or higher according to the nature of the product. After firing, the grains are closely bound together as a result of diffusion, chemical transformation or partial fusion.

Articles heated to temperatures less than 800 ℃ for purposes such as curing of resins, accelerating hydration reactions, or for the removal of water or other volatile components, are not considered to be fired for the purposes of Chapter Note 1. Such articles are excluded from Chapter 69.

E.Finishing

Therefore, where the 'ceramic product' is obtained from Rock, fired after shaping, i.e., covered by Part B of General Notes, which is the also case here inasmuch as the source material is Magnesite which is a naturally occurring rock, the stipulation regarding firing at 800°C or more would not be applicable.

3.10 In any case, it is evident from Para A of the General Notes to the HSN that while describing the process of firing, the same is undertaken on 'greenware', which is heated to a temperature of 800°C or more as per the nature of the product. There is nothing to suggest that the Subject Goods were 'green ware' and accordingly, the condition would not be applicable, even if the Subject Goods were assumed to be obtained by firing inorganic and non-metallic material. It is relevant to note here that the raw sources for obtaining Magnesia Carbon Bricksare (i) sea/brines, which is subjected to chemical treatment, known as Wet Route; and (ii) solid minerals, which undergoes mining and calcination, known as Dry Route. It being an undisputed position that the Subject Goods being obtained from Rock, it cannot be said to be covered under Para A of General Notes to HSN. He submits that subsequent legislative changes made in the year 2022 clearly establishes that prior to such amendment, the Subject Goods were classifiable under CTH 6902.

3.11 The Appellant submits that the subsequent legislative changes, which are prospective in effect, clearly demonstrates that the Subject Goods were otherwise classifiable under CTH 6902 during the relevant period. The changes made include insertion of condition 1 (b) to Note 1 of Chapter 69 of Customs Tariff in India, which specified as under:

> "Articles heated to temperatures less than 800 °C for purposes such as curing of resins, accelerating hydration reactions, or for the removal of water or other volatile components, are not considered to be fired. Such articles are excluded from Chapter 69".

A perusal of the aforesaid Note makes it clear that until 2022, the condition of heating at temperatures more than 800°C for the purposes of being considered as fired is not applicable. If such a condition would have to be read into from the HSN, there was no need for the Parliament to specifically provide for the same in the Customs Tariff.

3.12 Further, he submits that CTH 6815 in Chapter 68of Customs Tariff in India was also amended to specifically include *"Articles of stone or other mineral substances (including carbon fibres, articles of carbon fibres and articles of peat), not elsewhere specified or included* *containing magnesite, magnesia in the form of periclase, dolomite including in the form of dolime, or chromite".* Accordingly, he submits that the adjudicating Authority erred in disregarding the settled principle of law that specific entry would be preferred over a generic entry, while interpreting the Customs Tariff.

3.13 He further submits that Tariff Item 69021040 specifically covers the Subject Goods viz. Magnesia Carbon Bricks and shapes. It is a settled law that a specific entry in the tariff would be preferred over a general heading.

3.14 It is further submitted that Tariff Item 68159100, which is what is being contended by the Revenue for classification of Subject Goods, covers articles of stone or of other mineral substances, including fibre, articles of carbon fibre, not elsewhere classified or included. It clearly comes out from the said heading that the same applies to articles which are not elsewhere specified or included. In support of the above proposition, the Appellant relies upon the judgment in the case of Dunlop India Ltd. vs. Union of India reported in 1977 AIR 597 (SC)wherein it was held that a product should be classified under specific entry which covers it and should not be relegated to the orphanage, i.e. a specific entry should be preferred over a general entry.

3.15 With respect to the contention of the Ld. Special Counsel made in his written submissions, he submits that most of the member of the countries of WCO have accepted the classification of the subject goods under CTH 6815, besides being baseless and unsubstantiated, is wholly irrelevant to the determination of classification in the present case.

3.16 Further, he submits that mere fact that the other member countries of WCO may have adopted under CTH 6815 cannot be the basis for the Revenue to classify the goods imported by the Appellant also under the said CTH. It is submitted that the classification under the Customs Tariff must necessarily be decided on the basis of the specific nature, composition and tariff entries applicable to the goods imported by the Appellant, read with the relevant Section Notes, Chapter Notes, Rules for Interpretation. Merely because importers/exporters in other jurisdictions have adopted a particular classification does not ipso facto render such classification binding upon the Appellant or upon the Indian authorities.

3.17 Further, he submits that the Ld. Special Counsel in its submissions has also contended that the HSN and Tariff are aligned up to 6-digit level and India being a contracting party cannot surpass the scope of sub-heading while expanding to 8 digits. It is submitted that the entry at 6-digit level viz. 6902.10 states *"Containing by weight, singly or together, more than 50 % of the elements Mg, Ca, or Cr, expressed as MgO, CaO or Cr2O3"*is not surpassed inasmuch as Tariff Item 6902 1040 viz. 'Magnesia Carbon Bricks and shapes' does contain more than 50 % Magnesium (Mg). However, notwithstanding that the tariff item in the present case does not exceed the scope of sub-heading 6902.10, the same is not of much relevance for the reason that the eight-digit tariff items under the Customs Tariff in India represent a deliberate and autonomous exercise of India's sovereign legislative discretion.

3.18 Further, it is submitted that India introduced an eight-digit classification under the Customs Tariff in India with effect from 01.02.2003 vide the Customs Tariff (Amendment) Act, 2003. The legislative intent behind the introduction of the eight-digit classification is evident from the speech delivered by Shri Gingee Ramachandran, the then Minister of State in the Ministry of Finance and Company Affairs, at the time of introducing the Customs Tariff (Amendment) Bill, 2003 in the Rajya Sabha, wherein it was stated that additional two-digit layer would give India greater flexibility to enable sub-classification of items in a manner suited to India's own requirements. Thus, in every case, the specific enumerations at the 8-digit level are of significance as they reflect the intent of the Indian Parliament, which may not necessarily tally with what the WCO envisaged while framing the HSN and in case if there is any inconsistency, it will be the entries in the Customs Tariff in India, as enumerated by the Indian Parliament, that will prevail over the WCO's classification.

3.19 With respect to the submission of the Ld. Special Counsel in para 2(viii) that Monolithic refractories can indeed be pre-cast and pre-fired (PCPF) into specific shapes and the Monolithic in powder, paste or liquid form is classifiable under CTH 3816, while it is the PCPF which is classifiable under CTH 6903. It is submitted that, the two products are completely dissimilar. Had the proposition suggested by the Ld. Special Counsel been the correct factual position, nothing prevented the Adjudicating Authority to record a similar finding in the Impugned Order. Furthermore, nothing has been furnished on record by the Ld. Special Counsel to substantiate his claim that Monolithics are of two types, and it is PCPF monolithicswhich are classifiable in Chapter 69. Accordingly, he submits that impugned Order erred in confirming interest liability and ordering for confiscation of goods with an option to redeem on payment of Redemption Fine.

3.20 It is further submitted that since the demand itself is unsustainable, there arises no question of any interest liability.

3.21 Further, he submits that the impugned Order has also confirmed confiscation of goods under section 111(m) on the premise that the particulars declared in the bill of entry were incorrect. It is respectfully submitted that the appellant sought classification under CTH 69021090 and also sought concessional rate of BCD under Serial No.304 of Notification No.12/2012-Cus dated 17.03.2012. It is a settled law laid down by the Hon’ble Apex Court in the case of Northern Plastic Ltd. vs. Collector of Custom & Central Excise [1998 (101) ELT 549 (SC)] that claiming the benefit of exemption which according to the revenue is inadmissible does not tantamount to mis-declaration of particular so as to result into invocation of section 111(m) of the Customs Act. Recently, in the case of Vivo Mobile India Pvt. Ltd. vs. Principal Commissioner of Customs, 2024 (2) TMI 1508-CESTAT New Delhi, it was held that even if the classification adopted by the assesse is not correct, it does not render the goods liable for confiscation under Section 111(m) of Customs Act, 1962.

3.22. It is further submitted that Section 28 of the Customs Act, 1962 was amended by Finance Act, 2016 with effect from 14.05.2016, and the limitation for serving notice on the person chargeable with the duty or interest was amended to two years instead of earlier prescribed period of one year. In the present case, the period involved in the SCN dated 10.06.2016 is June 2014 to December 2014. It is submitted that the prospective amendment in the provision would not have the effect of reviving and resurrecting the demand which was earlier barred by limitation. In support of the above proposition, the Appellant relies upon the judgment in the case of Hexaware Technologies Ltd. vs. Assistant Commissioner of Income Tax, (2024) SCC Online Bom 1249.

3.23. In view of the above submissions, he prays for setting aside the impugned order by allowing their appeal with consequential benefit.

4. The ld.Special Counsel for the Revenue submits that as per Appellants own admission the goods in question are Magnesia Carbon Bricks heated around 250-350 degrees; not heated to 800 degrees and above. Chapter note 1 of chapter 69 read with the exclusion clause of HSN under the title Firing makes it crystal clear that the imported item will not be covered under chapter 69. This is a case where an incorrect proposition is being forcefully argued to justify a highly irrational and wrong classification for the imported goods.

4.1 He further submits that almost all the WCO countries in the world including India have already accepted the classification of these goods under 68.15 only (*evidences have already been submitted at the time of hearing and also all the relevant international citations have been mentioned in the order in original).* The classification of the imported goods in question is settled without any dispute anywhere in India and in most of the WCO countries. The present case by the appellants is only to dig the grave by raising a number of irrelevant points to confuse the issue and secure a favourable order by lucid story telling only.

4.2 Point wise reply to the Appellants submissions by the Special Counsel are as follows;

The Appellants are trying to mislead the Bench by making a number of factually incorrect statements which are nothing but unsubstantiated Guess work.:

(i) The issue is whether imported Goods :Magnesia Carbon Bricks heated around 250-350 degree will be classified under 69021040/69029090 OR under 68159990/68159100. *This issue has nothing to do with the production process of Magnesium Oxide, (MgO) by burning of Magnesite ,(MgCO3:Magnesium Carbonate) at 1800 degrees. This is deliberately stated to create confusion.* The goods are to be assessed as presented for assessment and the goods to be assessed are magnesia carbon bricks heated below 350 degree. These are excluded from chapter 69.

(ii) Indian Customs being a signatory to WCO adopted the HSN in 1986 and the Indian Customs Tariff remain Aligned to HSN upto 6 digits level since then. India can not go beyond the scope of Chapter Headings and sub headings while expanding the 6 digit HSN code to 8 digit ITC-HS Code. To explain it further, attention is invited to General Explanatory note**s** at the end of Rules for interpretation in the HSN and Customs Tarriff which is reproduced below.

> *"Where in column(2)of this schedule, the description of an article or group of articles under a heading is preceded by "-" ,the said article or group of articles shall be taken to be a sub classification of the article or group of articles covered by the said heading.Where,however,the description of an article or group of*

> *articles is preceded by "_ _",the said article or group of articles shall be taken to be the sub classification of the immediately preceding description of the article or group of articles which was "-".Where the description of an article or group of articlesis preceded by "- - - "or "- - - -",the said article or group of articles shall be taken to be a sub classification of the immediately preceding description of the article or group of articles which has "-"or "—".*

Therefore, Indian Customs has no authority to go beyond the scope of subheading (of 6 digits) while expanding to 8 digits. All the attempts made by appellants to show that the Indian Tariff is different at 8 digit level from the 6 digit HSN by including unrelated items /entries on the grounds of *entries rendered redundant and otiose* fails miserably. He submits that the Central Excise case law in Camlin Ltd. pertains to the time when excise tariff was not aligned to HSN hence totally irrelevant and cited to confuse the issue.

(iii) Chapter note 1 is SACROSANCT. It applies only to Ceramic products which have been fired after shaping. Confusion is deliberately created that Firing beyond 800 degree is for green ware only. the exclusion clause of the same HSN explanatory notes which reads as "articles heated to temperatures less than 800 degree C for purposes such as curing of resins, accelerating hydration reactions,or for the removal of water or other volatile components, are not considered to be FIRED for the purposes of chapter note 1. Such articles are excluded from chapter 69" has been deliberately concealed and not revealed to this Bench. It is further submitted that appellants have submitted that this provision was introduced in chapter notes only w.e.f.2022 whereas this provision was there right from 2007 in the HSN and the introduction in chapter note was only by way of clarification as per finance bill**.** *It is clarified that this exclusion clause was originally not there in the HSN in 1988 and was introduced much after 1988 but before the 2007 edition clearly indicating that whatever doubt or confusion might have arisen with regard to any Articlewhich was not heated to 800 degrees, the same was clearly excluded from chapter 69.*

(iv) Confusion has further been created that the firing after shaping applies only to such ceramic products which are classifiable under CTH 6904 to 6914 by way of teaching English language to this Bench that as the Chapter note after full stop says"Heading 6904 to 6914 apply only to such products other than those classifiable in heading 6901 to 6903". They say that this means that 6901 to 6903 is excluded from the ceramic products. It is crystal clear that 6901,6902 and 6903 all the 4digit headings contain the specific word CERAMIC and the same has been consciously done in line with the chapter note because HSN treats all these goods under the chapter Ceramic Products. *Why it was done is because as per the General Rules for Interpretation Rule 3(C) if an article merits classification under 2 headings,it has to classified under heading which occurs last in the numerical order. Since many articles are common in 6901-6903- and 6904-6914 e.g. Tiles, Bricks,Blocks etc.(were falling in both Refractory Ceramic goods and other Ceramic goods) special dispensation was made in the Head note so that both items could be classified separately in their respective headings .*The Appellants are either ignorant of this simple provision or deliberately created this confusion to fail the departments case. Needless to say, such speculative interpretation

amounts to rewriting the HSN to justify their case. But that is legally not Permissible.

(v) Further confusion is being created by the appellants by stating that chapter 69 has two sub chapters of which sub chapter I applies to headings 6901 to 6903, covering "goods of silicious fossil meals or similar earths, and refractory goods" whereas sub chapter II which applies to "OTHER Ceramic Products" and legislature has drawn distinction between the both and the chapter note 1 applies to only to ceramic products falling under sub chapter 2 and not to sub chapter I. It is a ridiculous proposition .It is evident that the heading of sub chapter 2 is other ceramic goods which is self explanatory and no legislative intention is required to understand that OTHER Ceramic Goods means that the first sub chapter also has Ceramic goods. The word OTHER prefixed to Ceramic products, needless to say, clearly show that all the goods under the chapter 69 have been classified as Ceramic goods only and the requirement of firing equally applies on them.

(vi) Another Bizzare assumption that Firing to temp 800 degree or higher is only meant for Ceramic products of sub chapter II : Other Ceramic Products (6904-6914) is self defeating because to say that the Refractory Ceramic goods falling under sub chapter I are not required to be fired to 800 degree or more as per chapter note 1 because these are not ceramic goods as per HSN is an absurd assumption keeping in view the specific Exclusion provided to all goods which are NOT FIRED upto 800 degree. ALL assumptions of the appellants fail when one refers to the exclusion clause specifically mentioned in the HSN since 2007 and before, and introduced by way of clarification in the, main chaper heading in 69 chapter of Indian Tarriff w.e.f. 2022.

(vii) Specific heading *vs.* Generic (Residuary) heading is another frivolous dispute created by the Appellants which is clearly meaningless. As per the exclusion clause of HSN the Magnesia Carbon bricks Heated beow 800 degree will be excluded from chapter 69.Further, chapter note 1applies to ceramic products fired after shaping. Hence to say that there is a specific heading for the imported goods in question is a blatantly incorrect statement deliberately made to confuse and misguide the BENCH. Yes, fired magnesia carbon bricks which are fired in a kiln above 800 degree shall be classifiable under69021040 as ceramic refractory. They are darker and ceramic bonded. Since the imported goods in question are unfired/resin bonded Magnesia Carbon Bricks, they are hit by the exclusion clause and No explanation will make them eligible for classification under the Chapter 69.These imported goods will be classifiable under 68159990/68159100,as polymer/resin bonded Refractory bricks. As per HSN for heading 68.15 : The heading covers, inter alia: …(5) "Bricks and other shapes(In particular magnesite or Chrome- Magnesite products),chemically bonded but not yet Fired. These articles are fired during the first heating of the furnace in which they are installed. Similar products presented after firing are excluded(69.02 or 69.03)".

Further, at the end of the heading notes in the HSN following notes makes everything clear;

"(b) Refractory goods, fired as ceramics, with a basis of carbonaceous substances(graphite, coke etc.) and coal tar pitch or Clay (69.02 or

69.03),as the case may be. No iota of doubt remains that the unfired goods in question can NEVER be classified under 69 and it will be classifiable under 68.15 only.

(viii) Another confusion has been created by the Appellants regarding monolithics/castables. Appellants state confidently that Monolithics ,Castables being unshaped are not classified under 69.03 by HSN but the same are placed in the Customs Tarriff under 69.03 which establishes that Indian Tarriff is not aligned with the HSN. The Appellants have again attempted to misguide the Bench by concealing the relevant facts .While Monolithic refractories are generally defined as unshaped materials(like castables or mortars) that harden in place, they can indeed be pre-cast and prefired(PCPF) into specific shapes for specialized industrial applications. Whereas Monolithics(standard) in powder, paste or liquid form is classifiable under 3816, pre-cast and pre-fired monolithics are in fixed,solid and ceramic shapes and fired. These are classifiable under 6903. the basic rule is that the 4 digit heading and the 6 digit sub heading of HSN are sacrosanct for the member countries and whatever 8 digit sub-sub headings are made ,it can not go beyond the 6 digit broad description. Hence only PCPF Monolithics will be covered here in 6903 and not general Monolithics.

(ix) Appellants have propounded another hypothesis that the expression "Ceramic Products" has been explained in the HSN to apply to products obtained:

(a) By firing inorganic,non-metallic materials which have been prepared and shaped previously at, in general, room temperature. Raw materials comprise, inter alia clays ,silicious materials, materials with a high melting point,such as oxides, carbides, nitrides, graphite or other carbon ,and in some cases binders such as refractory clays or phosphates;

(b) From Rock (e.g.steatite), fired after shaping.

They have speculated that HSN chapter note 1 would show that it applies to only ceramic products under sub-chapter II categorized as Other Ceramic Products. Sub chapter 1 does not cover any ceramic materials. This point has already been explained on the basis of 2 points:

1. Sub chapter 2 of Other ceramic materials clearly means that the sub chapter 1 also contain ceramic materials and 6901,6902 and 6903 all contain the word ceramic.

2. Evidently, Refractory goods have also been treated as Ceramic Goods as per the scheme of things under HSN wherein broad heading of Ceramic Products consists of both Refractory Ceramic goods as well as Other Ceramic Goods.

(x) While arguing the case the Appellants made an extremely vague submission that the Refractory goods are only made from b. ROCK and not the a. the silicious materials etc which is only for Ceramic products.Such submissions appear to have been deliberately made to confuse the whole issue and has nothing to do with the merit of the case. The refractories made from rock means directly from rocks by cutting treating firing etc. it does not mean extraction of ore and then subjecting them to the metallurgical operations to extract chemicals like MgO for making refractories. These are Appellants surmises and conjectures and have nothing to do with the merit of the case. He, therefore, prays for dismissing their appeal.

5. Heard both the parties and considered the submissions .

6. We find that the dispute in the present appeal concerns correct classification of the Magnesia Carbon Bricks, imported by the appellant from China and Austria, vide 220 Bills of Entry (165 in Chennai Seaport and 55 in Nhava Sheva), which according to the appellant is classifiable under the CTH 6902 of Customs Tariff Act, 1975, while the Revenue has re-classified the same under the CTH 6815.

6.1. For better appreciation of facts, the relevant Tariff Headings No.6815 and 6902 of the Customs Tariff Act, 1975, are extracted below for ready reference:

Tariff Heading	**Description of goods**	**Unit**	**Rate of duty** Standard	**Rate of duty** Preferential
6815	Articles of stone or of other mineral substances (including carbon fibres, articles of carbon fibres and articles of peat) not elsewhere specified or included			
68159100	Containing magnesite, magnesia in the form of periclase, dolomite including in the form of dolime or chromite			

Tariff Heading	**Description of goods**	**Unit**	**Rate of duty** Standard	**Rate of duty** Preferential
6902	Refractory bricks, blocks, tiles and similar refractory ceramic constructional goods, other than those of siliceous fossil meals or			

	similar siliceous earths			
69021040	Magnesia carbon bricks and shapes	mt	7.5%	-

6.2. The classification of the imported goods under the Customs Tariff must necessarily be decided on the basis of the specific nature, composition and tariff entries applicable to the goods imported by the Appellant, read with the relevant Section Notes, Chapter Notes, Rules for Interpretation. A particular classification adopted by the importers/exporters in other jurisdictions does not ipso facto binding upon the Appellant. From the Tariff descriptions extracted above, it can be seen that Tariff Item 69021040 specifically covers the Subject Goods viz. Magnesia Carbon Bricks and shapes, imported by the appellant. Tariff Item 68159100, which is being advocated by the Revenue for classification of the Subject Goods, covers articles of stone or of other mineral substances, including fibre, articles of carbon fibre, not elsewhere classified or included. It clearly comes out from the said description that the said heading 6815 applies to articles which are not elsewhere specified or included. It is a settled law that a specific entry in the tariff would be preferred over a general heading. This view has been held by the Hon'ble Apex Court in the case of Dunlop India Ltd. vs. Union of India reported in 1983 (13) E.L.T. 1566 (S.C) wherein it was held that a product should be classified under specific entry which covers it and should not be relegated to the orphanage, i.e. a specific entry should be preferred over a general entry. The relevant para 37 of the said decision is reproduced below for ready reference:

> ***37.*** ---
> ---.
> *When an article has, by all standards, a reasonable claim to be classified under an enumerated item in the Tariff Schedule, it will be against the very principle of classification to deny it the parentage and consign it to an orphanage of the residuary clause. The question of competition between two rival classifications will, however, stand on a different footing.*

6.3. Thus, we find the goods imported by the appellant are appropriately classifiable under the specific CTH 69021040 as the said description of the goods are specifically mentioned in the said CTH, as against the claim of the Revenue under the residuary Tariff Item 68159100.

6.4. The Ld. Special Counsel submitted that Chapter Note 1 of Chapter 69 is sacrosanct for determining the classification of the impugned goods. It is his submission that it applies only to Ceramic products which have been fired after shaping. He referred the exclusion clause of the HSN explanatory notes which reads as "articles heated to temperatures less than 800 degree C for purposes such as curing of resins, accelerating hydration reactions, or for the removal of water or other volatile components, are not considered to be FIRED for the purposes of Chapter Note 1. Such articles are excluded from chapter 69". The ld. Special Counsel for the Revenue submitted that the goods in question are Magnesia Carbon Bricks heated around 250-350 degrees and not heated to 800 degrees and above. Thus, according to him, Chapter Note 1 of Chapter 69 read with the exclusion clause of HSN under the title 'Firing' makes it clear that the imported goods would not be covered under the chapter 69. We find that the Ld. Adjudicating Authority has also confirmed the allegations levelled in the SCNs on the ground that the entry of the articles in Chapter 69 require therein a mandatory phenomenon of 'firing' or heating to a temperature not less than 800 ° C, which is not fulfilled in the present case. He observed that although the extent of firing is not specified in Customs Tariff, the same is expressly provided for in the HSN. As the subject goods are heated below the threshold limit of firing i.e. 800 ° C, the Ld. Adjudicating authority has confirmed the impugned demands in the SCNs.

6.5. In this regard, we find that the Note 1 of the Chapter 69 has been amended w.e.f from 01.01.2022. As the present issue pertains to the period prior to 01.01.2022, it is relevant to compare both the Chapter Notes that existed prior to 01.01.2022 and after 01.01.2022. For ready reference, both the Chapter Notes are extracted below"

Chapter Note 1 to Chapter 69 CUSTOMS – Prior to 2022
CHAPTER 69
Ceramic products
Notes
1. This Chapter applies only to ceramic products which have been fired after shaping. Headings 6904 to 6914 apply only to such products other than those classifiable in headings 6901 to 6903.

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Chapter Note 1 to Chapter 69 CUSTOMS - Post 2022
CHAPTER 69
Ceramic products
Notes:
1. This Chapter applies only to ceramic products which have been fired after shaping:
(a) Headings 6904 to 6914 apply only to such products other than those classifiable in headings 6901 to 6903;
(b) articles heated to temperatures less than 800°C for purposes such as curing of resins, accelerating hydration reactions, or for the removal of water or other volatile components, are not considered to be fired. Such articles are excluded from Chapter 69; and
(c) Ceramic articles are obtained by firing inorganic, non-metallic materials which have been prepared and shaped previously at, in general, room temperature. Raw materials comprise, inter alia, clays, siliceous materials including fused silica, materials with a high melting point, such as oxides, carbides, nitrides, graphite or other carbon, and in some cases binders such as refractory clays or phosphates.

6.6. From the above, it can be seen that, articles heated to temperatures less than 800°C, are not considered to be 'fired' and such articles are excluded from Chapter 69 only after incorporation of sub clause (b) in the Chapter Note 1, which was incorporated w.e.f.01.01.2022. No such condition was available in the Chapter Note 1 of Chapter 69 prior to 01.01.2022. Thus, it is evident that prior to 01.01.2022 the requirement of firing at 800°C or more was not a pre-condition for goods to be classified under Chapter 69. We observe that the Customs Tariff in India did not contain a stipulation to the effect that articles heated to temperatures less than 800°C are not considered to be 'fired' and are excluded from Chapter 69. Since such a clause has been inserted by the legislature in the Customs Tariff in India only with effect from 01.01.2022, we are of the view that such condition cannot be made applicable for the period prior to 01.01.2022. In this regard, we observe that the HSN and the Customs Tariff in India were at variance during the relevant period and hence, the General Notes to the HSN could not be applied for interpretation of an entry in Customs Tariff in India, as has been held by Hon'ble Supreme Court in the case of Camlin Ltd. vs. CCE, 2008 (9) TMI 1 - Supreme Court. The relevant para 26 of the said decision is reproduced below for ready reference:

> ***26.*** *In our considered view, the Tribunal erred in relying upon the HSN for the purpose of marker inks in classifying them under Chapter Sub-Heading 3215.90 of the said Tariff. The Tribunal failed to appreciate that the entries under the HSN and the entries under the said Tariff are completely different. As mentioned above, it is settled law that when the entries in the HSN and the said Tariff are not aligned, reliance cannot be placed upon HSN for the purpose of classification of goods*

> *under the said Tariff. One of the factors on which the Tribunal based its conclusion is the entries in the HSN. The said conclusion in the Order of the Tribunal is, therefore, vitiated and, accordingly, set aside. We agree with the findings recorded by the Commissioner (Appeals).*

6.7. The Ld. Special Counsel submitted that the exclusion clause has been specifically mentioned in the HSN since 2007 and before, and introduced by way of clarification in the main chapter heading in 69 chapter of Indian Tariff w.e.f. 01.01.2022 and hence it is applicable retrospectively. We do not subscribe to the view expressed by the Ld. Special Counsel. The eight-digit classification under the Customs Tariff in India was introduced with effect from 01.02.2003 vide the Customs Tariff (Amendment) Act, 2003. The legislative intent behind the introduction of the eight-digit classification is evident from the speech delivered by Shri Gingee Ramachandran, the then Minister of State in the Ministry of Finance and Company Affairs, at the time of introducing the Customs Tariff (Amendment) Bill, 2003 in the Rajya Sabha, wherein it was stated that additional two-digit layer would give India greater flexibility to enable sub-classification of items in a manner suited to India's own requirements. Thus, in every case, the specific enumerations at the 8-digit level are of significance as they reflect the intent of the Indian Parliament, which may not necessarily tally with what the WCO envisaged while framing the HSN and in case if there is any inconsistency, it will be the entries in the Customs Tariff in India, as enumerated by the Indian Parliament, that will prevail over the WCO's classification. As the stipulation to the effect that articles heated to temperatures less than 800°C are not considered to be 'fired' and are excluded from Chapter 69, has been inserted by the legislature in the Customs Tariff in India only with effect from 01.01.2022, we hold that such condition cannot be made applicable for the period prior to 01.01.2022.

6.8. Further, a perusal of the Tariff entries under the Chapter 69 reveals that the said Chapter has two sub-chapters, while sub-chapter 1 covers articles under CTH 6901 to 6903, sub-chapter II covers articles under CTH 6904 to 6914. We observe that the requirement of firing applies only in respect of ceramic products covered by sub-chapter II of Chapter 69 and not to sub-chapter I of Chapter 69, under which the Subject Goods are classified. This is evident from a reading of Note 1 to Chapter 69:

> *"This Chapter applies only to ceramic products which have been fired after shaping. Headings 6904 to 6914 apply only to such products other than those classifiable in headings 6901 to 6903."*

(Emphasis supplied)

6.9. A perusal of the above Chapter Note would make it clear that the stipulation regarding firing after shaping applies only to such ceramic products which are classifiable under CTH 6904 to 6914. If the condition of firing after shaping was applicable to all ceramic products under Chapter 69, there would have been no warrant for the second sentence which reads, "Headings 6904 to 6914 apply only to such products other than those classifiable in headings 6901 to 6903". Thus, it is evident that the requirement of firing after shaping applies only to ceramic products classifiable under CHT 6904 to 6914 and not to products classifiable under CTH 6901 to 6903. we find that the stipulation in HSN Explanatory Notes regarding firing above 800°C applied to ceramic products classifiable under CTH 6904 to 6914 in sub-chapter II of Chapter 69 and did not apply to refractory products classifiable under CTH 6901-6903 in sub-chapter I of Chapter 69. The condition of firing at 800°C or more was not applicable to ceramic products obtained from Rock, fired after shaping, and was applicable only to ceramic products obtained by firing inorganic, non-metallic material which had been prepared and shaped previously at, in general, room temperature. Even if Chapter Note 1 of Chapter 69 is applicable, there is no stipulation that firing has to take place at 800 degree C or more for all the ceramic products to be classified under Chapter 69. The legislative changes made in the year 2022 clearly establishes that prior to such amendment, the Subject Goods were classifiable under CTH 69021040 and they are eligible for the concessional rate of BCD under Serial No.304 of Notification No.12/2012-Cus dated 17.03.2012 as claimed by them in the impugned Bills of Entry.

6.10. Accordingly, we hold that the demand of differential customs duty confirmed in the impugned order by re-classifying the impugned goods under the CTH 6815 is legally not sustainable and hence we set aside the same. Since the demand itself is not sustainable, the question of demanding any interest does not arise and hence the interest demanded is set asdie.

7. Regarding the penalty imposed on the appellant under Section 112(a) of the Customs Act, 1962, we find that penalty has been imposed on the appellant on the allegation that the particulars declared

in the bills of entry were incorrect. In view of the discussions in the preceding paras, It has been held that the classification of the goods determined by the appellant is legally correct and the appellant is eligible for the benefit of exemption as claimed by them in the Bills of Entry. Thus, we observe that there is no mis-declaration with an intent to evade payment of customs duty has been established in this case. Accordingly, we hold that no penalty imposable on the appellant under section 112(a) of the Customs Act, 1962 and hence we set aside the same.

8. Regarding confiscation of the goods in the impugned order, we find that the impugned goods have been confiscated under section 111(m) of the Customs Act, 1962, on the allegation that the particulars declared in the bills of entry were incorrect. In view of the discussions in the preceding paras, It has been held that the classification of the goods determined by the appellant is legally correct and the appellant is eligible for the benefit of exemption as claimed by them in the Bills of Entry. Thus, we observe that there is no mis-declaration established in this case. Even otherwise, we find that the appellant sought classification of the impugned goods under the CTH 69021090 and also sought concession rate of BCD under Serial No.304 of Notification No.12/2012-Cus dated 17.03.2012. It is settled law laid down by the Apex Court in the case of Northern Plastic Ltd. vs. Collector of Custom & Central Excise [1998 (101) ELT 549 (SC)] that claiming the benefit of exemption which according to the revenue is inadmissible does not tantamount to mis-declaration of particular so as to result into invocation of section 111(m) of the Customs Act. The same view has

been held by the Tribunal, Delhi in the case of Vivo Mobile India Pvt. Ltd. vs. Principal Commissioner of Customs, 2024 (2) TMI 1508-CESTAT New Delhi, wherein it was held that that even if the classification adopted by the assessee is not correct, it does not render the goods liable for confiscation under Section 111(m) of Customs Act, 1962. Accordingly, we hold that the confiscation of the goods in the impugned order is legally not sustainable and hence we set aside the same.

9. In view of the above discussions, we set aside the impugned order and allow the appeal filed by the appellant with consequential relief, if any, as per law.

(Pronounced in the open court on **17.08.2026**)

(Ashok Jindal)
Member (Judicial)

(P.Anjani Kumar)
Member (Technical)

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