

Abrasive India Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-20-1999

Reported in : (1999)(114)ELT365TriDel

Appellant : Abrasive India

Respondent : Commissioner of Central Excise

Judgement :

1. We are concerned in this appeal with classification of calcined of bauxite, Appellants herein contend that the proper classification of the aforesaid goods is 26.06. Tariff description of the TH reads as "Aluminium Ores and Concentrates". The lower authority, however, has classified the product under TH 68.07 pertaining to "all other articles of stone, plaster, cement, asbestos, mica or similar materials not elsewhere specified or included.

2. Process of manufacture of the calcined bauxite is given in the impugned order as follows :- "Bauxite is mined. It is thereafter processed in shaft furnace at a temperature of 1200C to 1400C using coke as the heating medium.

After this heat treatment takes place the calcination of 100 grade of Bauxite which hardens the amery stone present in it and reduces it to amery lumps. These lumps are crushed and graded and thereafter amery grain powder obtained." 3. Reasoning of the lower authority for classifying the aforesaid product under TH 68.07 is that the impugned product is neither aluminium ore nor aluminium concentrate but it is calcined bauxite as is apparent from the process of

manufacture above and also declared in the classification list filed by the appellants. The adjudicating authority has also relied upon Board's Circular No. 13/87-CX, IV, dated 18-12-1987 -1988 (33) E.L.T. (T38). In the said circular lapping abrasive powder being a mixture of different substance including calcined alumina has been classified under TH 68.07. Accordingly, the classification would be under the said Heading.

4. Opposing the aforesaid finding, learned Consultant, Shri O.P.Agarwal, C. A. submits that the findings of the lower authority are wrong. The process of manufacture has already been set out above.

Bauxite is a natural ore of aluminium. Calcination of the bauxite will not make any difference to the classification of the said product as an ore of aluminium. In fact, the calcination , according to him, merely, concentrates the ore of aluminium contained in bauxite. He, therefore, submits that the correct classification would be under TH 26.06. He draws our attention to the Explanatory Notes to HSN relating to this Tariff Heading. These are given below :- "This heading covers bauxite (hydrated aluminium oxide containing variable proportions of iron oxide, silica etc.) The heading also covers bauxite, heat-treated (1,200C to 1,400C) suitable for use in metallurgy for the manufacture of aluminium (carbo-thermo-reduction in electric furnace, Gross, etc. processes) or for other uses (in particular, for the manufacture of abrasives)." He submits that it is very clear from the aforesaid Explanatory Notes that calcined bauxite even if not suitable for use in metallurgy and it is for other uses in particular for manufacture of abrasives which is not denied by the Revenue, it would still be classifiable under TH 26.06. He submits that it is a well settled proposition in law that tariff being based on HSN, Explanatory Notes to HSN would be of high persuasive value, as held by the Apex Court in the case of Woodcraft Products Ltd. reported in 1995 (77) E.L.T. 23. He, therefore, submits that the impugned order be set aside and appeal be allowed.

5. Opposing the contentions, learned JDR, Shri Ravinder Babu reiterates the findings of the lower appellate authority which already set out above.

5. We have carefully considered the pleas advanced from both sides. We agree with the submission of the learned Consultant that in classifying the product before

us Explanatory Notes to HSN are very material and are of high persuasive value as held by the Apex Court in the aforesaid case. It is very-clear from the Explanatory Notes, as extracted above that bauxite for other uses, in particular for manufacture of abrasives, would be covered under TH 26.06. The lower authority's finding treating it as lapping abrasive powder is totally beyond the point. The product is not at all lapping abrasive powder being a mixture of different substances. There is no mixture in the present case. Consequently, reliance placed by the lower authorities on CBEC circular is of no relevance at all.

6. In view of the aforesaid discussion, we set aside the impugned order and allow the appeal with consequential relief to the appellants.

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