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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2024
(@ Diary No.42993/2024)

COMMISSIONER OF CUSTOMS (IMPORT) APPELLANT(S)

VERSUS

M/S GROUP PHARMACEUTICALS LTD RESPONDENT(S)

O R D E R

Delay condoned.

We do not find any merit in this appeal. The Civil Appeal is hence dismissed.

Pending application(s) shall stand disposed of.

.....J.
[B.V. NAGARATHNA]

.....J.
(NONGMEIKAPAM KOTISWAR SINGH)

NEW DELHI;
OCTOBER 14, 2024

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ITEM NO.19 COURT NO.9 SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL Diary No(s). 42993/2024

(Arising out of impugned final judgment and order dated 06-03-2024 in CUSA No. 85267/2022 passed by the Custom Excise Service Tax Appellate Tribunal, West Zonal Bench At Mumbai)

COMMISSIONER OF CUSTOMS (IMPORT) Petitioner(s)

VERSUS

M/S GROUP PHARMACEUTICALS LTD Respondent(s)

(IA No.228238/2024-CONDONATION OF DELAY IN FILING and IA No.228241/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.228239/2024-STAY APPLICATION)

Date : 14-10-2024 This petition was called on for hearing today.

CORAM :
HON'BLE MRS. JUSTICE B.V. NAGARATHNA
HON'BLE MR. JUSTICE NONGMEIKAPAM KOTISWAR SINGH

For Petitioner(s) Mr. N.venkataraman, A.S.G.
Mr. Gurmeet Singh Makker, AOR
Mr. V C Bharathi, Adv.
Mr. Annirudh Sharma-ii, Adv.
Mr. Udai Khanna, Adv.
Mr. Navanjay Mahapatra, Adv.
Ms. B Sunita Rao, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

Delay condoned.

The Civil Appeal is dismissed in terms of the signed order.

Pending application(s) shall stand disposed of.

(NEETU SACHDEVA) (PREETHI T.C.)
ASTT. REGISTRAR-cum-PS ASSISTANT REGISTRAR

(Signed order is placed on the file)

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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 85267 of 2022

(Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-APP-1277/2021-22 dated 08.12.2021 passed by Commissioner of Customs (Appeals), Mumbai Zone-III, Mumbai.)

Group Pharmaceuticals Limited **.....Appellants**
1116, Hubtown, Viva
Shankarwadi, Jogeshwari (East)
Mumbai – 400 060.

VERSUS

Commissioner of Customs (Import) **.....Respondent**
Air Cargo Complex, Sahar, Andheri (East)
Mumbai–400 099.

Appearance:

Shri Suyog Bhave, Advocate for the Appellants
Shri Manoj Kumar, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85267/2024

Date of Hearing: 12.09.2023
Date of Decision: 06.03.2024

PER : M.M. PARTHIBAN

This appeal has been filed by M/s Group Pharmaceuticals Limited (herein after, referred to as 'the appellants'), assailing Order-in-Appeal No. MUM-CUSTM-AMP-APP-1277/2021-22 dated 08.12.2021 (herein after, referred to as 'the impugned order') passed by the learned Commissioner of Customs (Appeals), Mumbai Zone-III, Mumbai.

2. Briefly stated, the facts of the case are that the appellants herein, *inter alia*, is engaged in the manufacture of tooth paste. During such manufacturing process, the appellants had regularly imported '*BIOMIN F-Ground Glass (Fluoro Calcium Phospho-Silicate)'* and '*BIOMIN C-Glass (Chloro Calcium Phospho-Silicate)* which are used in the manufacture of toothpaste. In addition to the above imported goods, the appellants also

imported plastic pellets (containers) required for preventing damage to the imported goods during transit. These pellets are discarded at the port of import before transportation of the imported goods to the appellants' factory in the State of Karnataka. During the disputed period viz., February, 2018 to September, 2019, the appellants had classified the imported goods under Customs Tariff Item (CTI) 3207 4000 of the First Schedule to the Customs Tariff Act, 1975, in view of the classification adopted in the domestic, international markets and paid the applicable duty at the time of import. In the post-clearance audit of the import transactions, the department had objected to the classification adopted by the appellants under CTI 3207 and proposed classification under CTH 2853, on the basis of earlier classification adopted by appellants in the past, by issue of consultative letter dated 14.10.2019. The appellants filed their detailed reply by its letter dated 11.11.2019 providing the relevant documents and explanation thereof. Subsequently, the Department had fixed the pre-notice consultation hearing on 20.01.2020. On this the appellants had sought for a fresh date of such pre–notice consultation, owing to the reason that the said communication of the hearing issued by the Department vide letter dated 14.01.2020 was actually received by them on 22.01.2020. However, the Department had gone ahead with the show cause proceedings without providing any fresh opportunity of hearing by issue of Show Cause Notice (SCN) dated 03.02.2020. In the said SCN, it was proposed for re-classifying the imported goods under CTI 3824 9990 having duty structure of BCD@7.5% + SWS@10% + IGST@18% (total duty of 27.735%), instead of the classification adopted by the appellants CTI 3207 4000 having duty structure of BCD@5% + SWS@10% + IGST@18% (total duty of 24.49%); and for classifying the plastic pallets, in which the impugned goods are imported, separately under CTI 3923 1090. The SCN dated 03.02.2020 was adjudicated by the original authority in Order-in-Original dated 24.06.2020 by re-classifying the product as proposed in the SCN, confirming the demand of short paid customs duty under Section 28 of the Customs Act, 1962 along with interest and confiscation of imported goods under Section 111(m) ibid, besides imposition of penalty under Section 112(a) ibid. Being aggrieved with the impugned order dated 24.06.2020, the appellants have preferred an appeal before the Commissioner of Customs (Appeals), Mumbai-III, who by upholding the order of the Original authority had rejected the appeal filed by the appellants. Feeling aggrieved with the impugned order of the learned

Commissioner of Customs (Appeals) dated 08.12.2021, the appellants have filed this appeal before the Tribunal.

3.1. Learned Advocate for the appellants firstly contends that the appellants request for pre–consultation hearing had not been considered by the Department, as their case is non-receipt of notice for hearing, in time and is not a case for seeking adjournment of hearing. Learned Advocate further states that that the import product is ground glass and hence they had correctly classified the same under CTI 3207 4000. As the Customs Tariff Heading (CTH) 3207 specifically covers Glass frit and other glass in the form of powder, granules and flakes irrespective of the end-use, the impugned products i.e., ground glass is also classifiable under CTH 3207 and not under CTI 3824 9990, which is a residual entry of 'other' of chemical products and preparations of the chemical or allied industries, not elsewhere specified or included. Accordingly, they claimed that classification of impugned goods under CTH 3207 which specifically covers glass frit is appropriate, as it is settled law that specific entry must be given preference over a general entry, by placing reliance on the judgement of the Hon'ble Apex Court in the case of *Dunlop India Limited Vs. Union of India* – 1976 (20) SCC 24.

3.2 Learned Advocate also submitted that in terms of CBEC Circular No.3/2012-Customs dated 01.02.2012, it has been clarified that the sub–heading 3207 specifically covers glass frit and other glass, in the form of powder, granules or flakes. Further, he also relied upon the decision of this Tribunal in the case of *Collector of Customs & Central Excise, Rajkot Vs. Parshuram Pottery* – 2000 (118) E.L.T. 231 (Tribunal) wherein he stated that it has been held by the Tribunal that the classification of glass frit is under CTH 3207. It is also stated by him that packing material containing the imported goods is not to be classified separately unless it gives the imported goods an essential character or these are otherwise clearly suitable for repetitive use. Learned advocate also submitted that imported goods cannot be confiscated for merely on the grounds of mis-classification, especially in the absence of any discrepancy in the description and value of imported goods. Accordingly, he claimed that no penalty is impossible under Section 112(a) of the Customs Act.

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3.3 In support of their stand, learned Advocate had relied upon following decisions of the Tribunal and judgements of Hon'ble Delhi High Court, Hon'ble Supreme Court, in the respective cases mentioned below:

(i) *Commissioner of C. Ex., Bombay Vs. Unicon Connectors Pvt. Ltd.* – 2008 (232) E.L.T. 205 (Tri.- LB)

(ii) *Eminence Equipments Pvt. Ltd.* Vs. *Commissioner of C. Ex., Pune-I* - 2015 (330) E.L.T. 344 (Tri.- Mumbai)

(iii) *Bharat Bijlee Ltd. Vs. Commissioner of Central Excise & Customs*, *Belapur* – 2009 (234) E.L.T. 652 (Tri.-Mumbai)

(iv) *Aggarwal Laminated Pvt. Ltd. Vs. Deputy Commissioner of Customs (Import), New Delhi* – 2022 (379) E.L.T. 194 (Del.)

(v) *Dunlop India Limited Vs. Union of India* – 1976 (20) SCC 24

4. Learned Authorised Representative (AR) appearing for the Revenue reiterated the findings made by the Commissioner of Customs (Appeals) in the impugned order and submitted that issue of classification of impugned goods, has been examined in detail by the learned Commissioner of Customs (Appeals). Thus, learned AR justified the action in demand of short paid customs duty, confiscation of the imported goods, and imposition of penalty in the impugned order by rejecting the appeal filed by the appellants and stated that the impugned order is sustainable in law.

5. We have heard both sides and perused the case records and additional paper books submitted in this case.

6.1 The issue involved herein is to decide the classification of imported goods by the appellants as to whether, the same merits classification under Customs Tariff Item 3207 4000 as claimed by the appellants; or, is it classifiable under Customs Tariff Item 3824 9990 as contended by the Department, for deciding on the appropriate levy of customs duty, in respect of various Bills of Entries filed during the disputed period. Further, it is also required to be decided whether the plastic pallets which have been used for packing the imported goods, requires to be classified separately; and whether the imported goods along with packing material is liable to be confiscated for alleged violations of the Customs Act, 1962.

6.2 In order to address the above issue of classification of imported goods, we would like to refer the relevant legal provisions contained in Section 12 of the Customs Act, 1962; the Customs Tariff Act, 1975 and rules framed

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thereunder for consideration of proper and appropriate classification of the subject goods under dispute.

"***Section 12. Dutiable goods.*** -

(1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, on goods imported into, or exported from, India.

(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government."

"*Section 1. Short title, extent and commencement.* -

(1) This Act may be called the Customs Tariff Act, 1975.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Section 2. Duties specified in the Schedules to be levied. -

The rates at which duties of customs shall be levied under the Customs Act, 1962 (52 of 1962), are specified in the First and Second Schedules.

xxx xxx xxx xxx

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:

2. (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 articles has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more

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than one material or substance shall be according to the principles of rule 3.

3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

4. Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.

5. In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein:

(a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character;

(b) Subject to the provisions of (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provisions does not apply when such packing materials or packing containers are clearly suitable for repetitive use.

6. For legal purposes, the classification of goods in the sub-headings of a heading shall be determined according to the terms of those sub headings and any related sub headings Notes and, mutatis mutandis, to the above rules, on the understanding that only sub headings at the same level are comparable. For the purposes of this rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

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THE GENERAL EXPLANATORY NOTES TO IMPORT TARIFF

1. 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 a sub-classification of the immediately preceding description of the article or group of articles which has "-". where the description of an article or group of articles is 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 "--".

2. The abbreviation "%" in any column of this Schedule in relation to the rate of duty indicates that duty on the goods to which the entry relates shall be charged on the basis of the value of the goods as defined in section 14 of the Customs Act, 1962 (52 of 1962), the duty being equal to such percentage of the value as is indicated in that column.

3. In any entry, if no rate of duty is shown in column (5), the rate shown under column (4) shall be applicable.

ADDITIONAL NOTES

In this Schedule,—

(1)(a) "heading", in respect of goods, means a description in list of tariff provisions accompanied by a four-digit number and includes all sub-headings of tariff items the first four-digits of which correspond to that number;

(b) "sub-heading", in respect of goods, means a description in the list of tariff provisions accompanied by a six-digit number and includes all tariff items the first six-digits of which correspond to that number;

(c) "tariff item" means a description of goods in the list of tariff provisions accompanying eight digit number and the rate of customs duty;

(2) the list of tariff provisions is divided into Sections, Chapters and Sub-Chapters;

(3) in column (3), the standard unit of quantity is specified for each tariff item to facilitate the collection, comparison and analysis of trade statistics."

6.3 From plain reading of the above legal provisions, it transpires that in order to determine the appropriate duties of customs payable on any imported goods, one has to make an assessment of the imported goods for its correct classification under the First Schedule to Customs Tariff Act, 1975 in accordance with the provisions of the Customs Tariff Act, 1975 by duly following the General Rules for Interpretation (GIR) and the General Explanatory notes (GEN) contained therein. The First Schedule to the

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Customs Tariff Act, 1975 specifies the various categories of imported goods in a systematic and well-considered manner, in accordance with an international scheme of classification of internationally traded goods, i.e., 'Harmonized Commodity Description and Coding System' (HS). Accordingly, goods are to be classified taking into consideration the scope of headings / sub-headings, related Section Notes, Chapter Notes and the General Rules for the Interpretation (GIR) of the First Schedule to the Customs Tariff Act. Rule 1 of the GIR provides that the classification of goods shall be determined according to the terms of the headings of the tariff and any relative Section notes or Chapter notes and thus, gives precedence to this while classifying a product. Rules 2 to 6 provide the general guidelines for classification of goods under the appropriate sub-heading. In the event of the goods cannot be classified solely on the basis of GIR 1, and if the headings and legal notes do not otherwise require, the remaining Rules 2 to 6 may then be applied in sequential order. Further, while classifying goods, the foremost consideration is the 'statutory definition', if any, provided in the Customs Tariff Act. In the absence of any statutory definition, or any guideline provided by HS explanatory notes, the trade parlance theory is to be adopted for ascertaining as to how the goods are known in the common trade parlance for the purpose of dealing between the parties.

7. In the case before us, the contending classification of imported goods discussed in the impugned order are either under customs tariff item 3207 4000 or customs tariff item 3824 9990 of the First Schedule to the Customs Tariff Act. Thus, it is clear that at the Chapter level itself, there is difference of opinion among the department and the appellants. The dispute in classification therefore lies in the narrow compass of analysis of the appropriate Headings under which the impugned goods are covered as per the Customs Tariff and then classifying the impugned product under the corresponding Sub-heading, Tariff Item. Now, we may closely examine the scope of the contending classification for determining correct classification of the imported goods. The relevant tariff entries in the First Schedule to the Customs Tariff Act of contending Chapter headings 3207 and 3824 are extracted as below:

Tariff Item	Description of goods	Unit	Rate of Duty	
			Standard	Preferential Areas
(1)	(2)	(3)	(4)	(5)
3207	PREPARED PIGMENTS, PREPARED OPACIFIERS AND PREPARED COLOURS, VITRIFIABLE ENAMELS AND GLAZES, ENGOBES (SLIPS), LIQUID LUSTRES AND SIMILAR PREPARATIONS, OF A KIND USED IN THE CERAMIC,			

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Tariff Item	Description of goods	Unit	Rate of Duty	
	ENAMELLING OR GLASS INDUSTRY; GLASS FRIT AND OTHER GLASS, IN THE FORM OF POWDER, GRANULES OR FLAKES			
3207 10	*-Prepared pigments, prepared opacifiers, prepared colours and similar preparations :*			
3207 10 10	---Prepared organic dye-stuff pigments, dry	Kg.	10%	-
3207 10 20	---Prepared organic dye-stuff pigments, paste	Kg.	10%	-
3207 10 30	---Prepared inorganic pigments	Kg.	10%	-
3207 10 40	---Prepared opacifiers prepared colours and preparations	Kg.	10%	-
3207 10 90	---Other	Kg.	10%	-
3207 20	*- Vitrifiable enamels and glazes, engobes (slips) and similar preparations:*			
3207 20 10	--- Vitrifiable enamels and glazes	Kg.	10%	-
3207 20 20	--- Engobes (slips) and similar preparations	Kg.	10%	-
3207 30 00	- Liquid lustres and similar preparations	Kg.	10%	-
3207 40 00	**-Glass frit and other glass, in the form of powder, granules or flakes**	Kg.	10%	-

and

Tariff Item	Description of goods	Unit	Rate of Duty	
			Standard	Preferential Areas
(1)	(2)	(3)	(4)	(5)
3824	PREPARED BINDERS FOR FOUNDRY MOULDS OR CORES; CHEMICAL PRODUCTS AND PREPARATIONS OF THE CHEMICAL OR ALLIED INDUSTRIES (INCLUDING THOSE CONSISTING OF MIXTURES OF NATURAL PRODUCTS), NOT ELSEWHERE SPECIFIED OR INCLUDED			
3824 10 00	- Prepared binders for foundry moulds or cores	Kg.	10%	-
3824 30 00	- Non-agglomerated metal carbides mixed together or with metallic binders	Kg.	10%	-
3824 40	*- Prepared additives for cements, mortars or concretes:*			
3824 40 10	--- Damp proof or water proof compounds	Kg.	10%	-
3824 40 90	--- Other	Kg.	10%	-
3824 50	*- Non-refractory mortars and concretes*:			
3824 50 10	--- Concretes ready to use known as "Ready-mix Concrete (RMC)"	Kg.	10%	-
3824 50 90	--- Other	Kg.	10%	-
3824 60	*- Sorbitol other than that of sub-heading 2905 44:*			
xx	xx xx xx xx	xx	xx	xx
	- Mixtures containing halogenated derivatives of methane, ethane or propane:			
3824 71 00	--Containing chlorofluorocarbons (CFCs), whether or not containing hydrochlorofluoro-carbons (HCFCs), perfluorocarbons (PFCs) or hydrofluorocarbons(HFCs)	Kg.	10%	-
xx	xx xx xx xx	xx	xx	xx
	- Goods specified in Sub-heading Note 3 to this Chapter:			
3824 81 00	-- Containing oxirane (ethylene oxide)	Kg.	10%	-
xx	xx xx xx xx	xx	xx	xx
3824 99	*-- Other:*			
xx	xx xx xx xx	xx	xx	xx
3824 99 90	***--- Other***	Kg.	10%	-

8.1 It could be seen that by applying the GIR 1 - rule at (i) above, the position is made clear that Chapter Heading 3207 covers within its scope and ambit, mainly of two broad categories of goods:

(i) first one i.e., "Prepared pigments, prepared opacifiers and prepared colours, vitrifiable enamels and glazes, engobes (slips), liquid lustres and similar preparations, of a kind used in the ceramic, enamelling or glass industry" and

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(ii) the other, second one i.e., "glass frit and other glass, in the form of powder, granules or flakes", which are specifically covered under CTI 3207 4000.

8.2. Similarly, it could also be seen that by applying same GIR 1 - rule at (i) above, it could also be seen that Chapter Heading 3824 covers within its scope and ambit, mainly of two broad categories of goods:

(i) first one i.e., "Prepared binders for foundry moulds or cores," and

(ii) the other, second one i.e., "chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included".

8.3 As the product under dispute is ground glass described as '*BIOMIN F-Ground Glass (Fluoro Calcium Phospho-Silicate)'* and '*BIOMIN C-Glass (Chloro Calcium Phospho-Silicate),* it could be made out that these are covered more specifically by the description of CTI 3207 4000 as 'glass frit' and 'glass in the form such as powder, granules or flakes'. Further, the contending classification under CTI 3824 9990 as 'other' under the residual entry of 'other chemical products and preparations of the chemical or allied industries', which is not elsewhere specified or included, residual entry. Further, in terms of the explanation given by the appellants the imported goods are being used in the manufacture of toothpaste, and thus these are not related to chemical or allied industry. From the above analysis, we are of the considered view that for legal purposes, as per GIR-1, the classification of impugned goods under CTI 3207 4000 is appropriate.

9.1 On the other hand, the Revenue's contention is that in terms of GIR-4, the impugned goods shall be classifiable under CTI 3824 9990 as the description of the goods under this heading is most akin, and that these goods are not used in the ceramic or glass industry, in order to merit classification under CTI 3207 4000. From the careful reading of the GIRs, it could be seen that these are required to be followed sequentially; in other words, when the classification of goods is not possible to be arrived under the first rule GIR-1 then one need to proceed further, one by one. Further, for for invoking GIR-4, the preceding condition that "*Goods which cannot be classified in accordance with the above rules…"* i.e., GIR 1 to GIR 3, is to be applied. As it could be seen that in the present case, when the classification

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of goods can be arrived at by following GIR-1, then there is no case for invoking GIR-4 arbitrarily. Further, the learned Commissioner of Customs (Appeals) in the impugned order had taken a view that the impugned goods are not used in glass or ceramic industry for denying the classification under CTI 3207 4000. As it could be seen from the discussion about the scope of coverage of the goods, in paragraph 8.1 above, the use of goods in ceramic, enamelling or glass industry is qualified for the first category of the goods covered under the CTI 3207 1010 to 3207 3000, and does not apply to goods covered under CTI 3207 4000.

9.2 We also find that our such view has also been supported by the clarification issued by the Ministry of Finance in CBEC Circular No.3/2012-Customs dated 01.02.2012. The relevant paragraphs of the said circular are extracted below:

"Circular No.03 / 2012 - Customs
F. No. 524/129/2011-STO (TU)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs

229A, North Block, New Delhi,
1st February, 2012.

To
All Chief Commissioners / Commissioner of Customs / Customs (Prev.)
All Chief Commissioners / Commissioner of Customs & Central Excise
All Commissioners of Customs (Appeals)
All Commissioners of Customs & Central Excise (Appeals)
All Directors General under CBEC.

Subject: Classification of Fused Silica under Customs Tariff Act, 1975 - regarding.

****

Sir / Madam,

References have been received in the Board from field formations regarding divergent practices being followed in respect of classification of 'Fused Silica' under Customs Tariff sub-heading 250610, 281122, 320740 or 700231.

2. The matter of correct classification of fused silica under the First Schedule to the Customs Tariff Act, 1975 was taken up for discussion during the Conference of Chief Commissioners of Customs on Tariff and allied matters held in May 2011. After examining the various entries in the said schedule and the technical aspects of the product in question, it was decided that the Chief Commissioners under whose jurisdiction the import of fused silica are taking place, shall furnish the technical details of the product to the Board; it was also decided to seek an expert opinion before arriving at a final decision regarding classification of the product.

xx xx xx xx xx

4.3. Sub-heading 3207 specifically covers 'glass frit and other glass, in the form of powder, granules or flakes'. In the HSN explanatory notes to 3207 it has also been provided that Glass frit and all other varieties of glass

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(including vitrite and glass obtained from fused quartz or other fused silica) in the form of powder, granules or flakes, whether or not coloured or silvered is classifiable under sub-heading 3207. Therefore, on application of General Rules for the Interpretation (GIR) of the First Schedule to Customs Tariff GIR-1 and GIR-6, read with Chapter Note 3 to Chapter 28, 'Fused Silica' is correctly classifiable under tariff item 32074000."

10. We also find that the learned Advocate for the appellants had advanced an argument by stating that pre-consultation notice opportunity has not been given to the appellants. In this regard, we find that pre-notice consultation procedure has been prescribed in terms of the proviso to clause (a) of sub-section (1) of Section 28 ibid, read with the Pre-Notice Consultation Regulations, 2018 to provide for an effective mechanism of consultation in respect of cases not involving collusion, wilful mis-statement, suppression etc., before issue of demand notice. In the present case, such consultation could not take place for the reason that the pre-consultation notice issued by the department was not received as on the scheduled date of consultation i.e., on 20.01.2020 by the appellants, but was received only on 22.01.2020 i.e., after two days of the proposed consultation. However, during the process of adjudication by the original authority and before the appellate authority, the appellants had appeared for personal hearings to explain their case. Hence, to this extent it cannot be said that the principles of natural justice was not followed by the department in adjudication process.

11.1 In respect of the issue of classification of 'plastic pallets', the authorities below had proposed classification of these goods separately under CTI 3923 1090, for the reason that the appellants had declared its value as miscellaneous charges and were paying applicable import duty under the same classification as that of the main item of import, to which these were used as packaging material. In the impugned order, the Commissioner (Appeals) had upheld the classification of such goods in terms of GIR-5, by concluding that it is amply clear that the packing materials or packaging containers of repetitive use shall be classified separately, and not along with the goods for which these are used for packing purpose. We find that the department had claimed for separate classification of packing material on the ground that these were not declared in the bills of entry. In determining the issue of classification of packing materials, the GIR-5 provides overall guidance and hence the same is extracted below for ease of reference:

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"5. In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein:

(a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character;

(b) Subject to the provisions of (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provisions does not apply when such packing materials or packing containers are clearly suitable for repetitive use."

11.2 From plain reading of the above GIR-5, it is clear that certain specified type of containers which provide a specific package in terms of shape or suitability to fit the article, for long term use and is normally presented with such article, is to be classified along with such article. However, when such containers are presented separately, by giving the whole its essential character, as durable special container for packing of specific type of goods, then these could be categorized for classification separately as provided in GIR-5(a). Further, packing materials and packing containers presented along with the goods, which they contain as its contents, shall be classified along with such goods and these are not required to be classified separately in terms of GIR-5(b). In the present case, the imported goods have been presented along with the 'plastic pallets' as packing containers, and thus there appears to be no requirement for a separate classification in terms of GIR-5 above. Further, the finding in the impugned order that the packing containers in this case are of repetitive use, is also contrary to the facts. In this case, the 'plastic pallets' has been claimed in the impugned order and by original authority as 'packaging containers' for repetitive use and hence are rightly classified separately under CTH 39 23. However, we do not find any document or detail in the Bill of entry to indicate that the plastic pallets are of durable containers for repetitive use. The CBEC in its clarification vide Circular No. 69/2002-Customs dated 25.10.2002 had clarified that any goods/containers used for packaging or transporting other goods, and capable of being used several times, would fall in the category 'containers of durable nature', which are exempt from import duty under Notification No.104/94-Customs dated 16.03.1994. Thus, we do not find any merits in the impugned order on this aspect and hence the same is not sustainable.

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12. In respect of the issue on imposition of penalty, we do not find any material evidence placed during the adjudication proceedings by the authorities below, to arrive at the conclusion that there was mis-declaration in the description of the goods or in classification of the goods, in order to claim that the appellants have violated the provisions of Section 111(m) ibid. We also find that the Co-ordinate Bench of this Tribunal, in the case of *Bharat Bijlee Ltd.* (supra) has held that in the matter of interpretation of classification, imposition of penalty is not called for.

13. In view of the foregoing discussions and analysis, we conclude that the products under consideration i.e., (i) '*BIOMIN F-Ground Glass (Fluoro Calcium Phospho-Silicate)'* and (ii) '*BIOMIN C-Glass (Chloro Calcium Phospho-Silicate)* would appropriately be classifiable under Customs Tariff Item (CTI) 3207 40 00 and not under CTI 3824 99 90, as claimed by Revenue. Further, we also conclude that there no separate classification required to be adopted in respect of (iii) 'plastic pallets' used as packing container or packing material, when presented along with the imported goods.

14. Therefore, we are of the considered view that the impugned order passed by the learned Commissioner of Customs (Appeals), Mumbai-III cannot be sustained on merits.

15. Therefore, by setting aside the impugned order, we allow the appeal in favour of the appellants.

(Order pronounced in open court on 06.03.2024)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha

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