CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH- COURT NO. I

CUSTOMS APPEAL NO. 54805 of 2023

(Arising out of Order-in-Original No. 1/2023-Commissioner, Customs (Prev.), Jodhpur, Headquarter Jaipur dated 30.01.2023 passed by the Commissioner of Customs (Preventive), Jodhpur)

M/s Clay Craft (India) Pvt. Ltd. **....Appellant**
F-766, Road No. 1D, VKI Area
Jaipur – 301 019

Versus

Commissioner of Customs **....Respondent**
Commissioner (Preventive), Jodhpur
Hqrs. Jaipur, NCRB, C-Scheme
Jaipur – 302 005

WITH

CUSTOMS APPEAL NO. 54923 of 2023

(Arising out of Order-in-Original No. 1/2023-Commissioner, Customs (Prev.), Jodhpur, Headquarter Jaipur dated 30.01.2023 passed by the Commissioner of Customs (Preventive), Jodhpur)

Vikas Agarwal **....Appellant**
Director of M/s Clay Craft (India) Pvt. Ltd.
F-766, Road No. 1D, VKI Area
Jaipur – 301 019

Versus

Commissioner of Customs **....Respondent**
Commissioner (Preventive), Jodhpur
Hqrs. Jaipur, NCRB, C-Scheme
Jaipur – 302 005

AND

CUSTOMS APPEAL NO. 54917 of 2023

(Arising out of Order-in-Original No. 1/2023-Commissioner, Customs (Prev.), Jodhpur, Headquarter Jaipur dated 30.01.2023 passed by the Commissioner of Customs (Preventive), Jodhpur)

Dharam Chand Sahu **....Appellant**
Manager of M/s Clay Craft (India) Pvt. Ltd.
F-766, Road No. 1D, VKI Area
Jaipur – 301 019

Versus

Commissioner of Customs **....Respondent**
Commissioner (Preventive), Jodhpur
Hqrs. Jaipur, NCRB, C-Scheme
Jaipur – 302 005

APPEARANCE:

Shri Madhusudan Sharma, advocate for the appellant
Shri Shiv Shankar, authorized representative of the department

CORAM : HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. S.V. SINGH, MEMBER (TECHNICAL)

Date of Hearing : 27.10.2025
Date of Decision : 27.04.2026

FINAL ORDER NO's. 50777, 50780 & 50778/2026

JUSTICE DILIP GUPTA :

Customs Appeal No. 54805 of 2023 has been filed by M/s Clay Craft (India) Pvt.[1] to assail that portion of the order dated January 30, 2023 passed by the Commissioner that classifies the goods imported by the appellant through six Bills of Entry under Customs Tariff Item[2] 2835 26 90 instead of CTI 2510 20 30 classified by the appellant. Accordingly, differential duty has been ordered to be recovered under section 28(4) of the Customs Act, 1962[3] with interest under section 28AA of the Customs Act and penalty under section 114A of the Customs Act. The goods have also been confiscated under section 111(m) of the Customs Act with an option to redeem the same on payment of fine.

2. **Customs Appeal No. 54923 of 2023** has been filed by Vikas Agarwal, Director of the appellant to assail that portion of the order dated January 30, 2023 passed by the Commissioner that

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1. the appellant
2 CTI
3 the Customs Act

imposes a penalty of Rs. 10 lacs under section 114AA and a penalty of Rs. 2 lacs upon him under section 112(a)(ii) of the Customs Act.

3. **Customs Appeal No. 54917 of 2023** has been filed by Dharam Chand Sahu, Manager of the appellant to assail that portion of the order dated January 30, 2023 passed by the Commissioner that imposes a penalty of Rs. 1 lac upon him under section 112(a)(ii) of the Customs Act.

4. The appellant imported Apatite (GR) Calcium Phosphate through six Bills of Entry during the period from May 25, 2019 to January 29, 2020 and classified the same under CTI 2510 20 30.

5. However, a show cause notice dated March 17, 2022 was issued to the appellant proposing to classify the goods under CTI 2835 26 90 with consequential demand of customs duty. The show cause notice alleges that in ceramic industry calcium phosphate is used in the production of ceramic tableware and Chapter 25 of the Customs Tariff Act, 1975[4] covers only products which are in the crude state or which have been washed (even with chemical substances eliminating the impurities without changing the structure of the product), crushed, powdered, levigated, shifted, screened, concentrated by flotation, magnetic separation or other mechanical or physical processes (except crystallization), but does not cover products which have been roasted, calcined, obtained by mixing or subjected to processing beyond that mentioned in each heading. However, calcium phosphate classified under Chapter 28 of the Tariff

4 the Tariff Act

Act covers phosphates of calcium that include precipitated calcium phosphate (i.e ordinary calcium phosphate). It is used in the manufacture of glass or pottery.

6. The appellant submitted a reply to the show cause notice and denied the allegations made therein.

7. The Commissioner relied upon the emails sent by the suppliers to the Director and Managing Director of the appellant wherein the suppliers stated that Apatite (GR) Calcium Phosphate was wrongly classified under Chapter 25 earlier and their tax department have informed that it is classifiable under Chapter 28. In respect of these emails, the Commissioner observed as follows :

> "10.3.3. **The noticee's submissions that these Emails were simply for information to them are too far fetched and unacceptable. These Emails clearly show that the noticee's suppliers are clear that Apatite Calcium Phosphates being supplied by them are not classifiable under Chapter 25 but are appropriately classifiable under Chapter 28. Of course, the noticee are trying to get different names for the goods from the suppliers under Chapter 28 as they have declared Apatite under Chapter 25 in the earlier Bills of entry**. That is the reason, they are saying that they are unable to use the name Apatite Calcium Phosphate for goods under CTH 28. Yes, the noticee is correct in stating that classification is to be decided under the Indian Customs Tariff. **But the emails exchanged clearly show that the goods procured by them were correctly classifiable under Chapter 28 and not under Chapter 25 as declared by them in their earlier Bills of entry**. Their malafides in declaring goods of Chapter 28 under Chapter 25 are clearly brought out by these emails."
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> **[emphasis supplied]**

8. The Commissioner also relied upon the emails dated February 29, 2020, March 13, 2020, March 15, 2020 and March 16, 2020 wherein the Director of the appellant had requested the supplier to remove the word 'calcination' and use the word 'heating' instead. The Commissioner concluded that this was done to show that the products supplied had not undergone any calcination. The observations are :

> "**16**. **I also observe that prior to May 2019, the assessee were importing Calcium Phosphate under CTH 28352690. In the instant 6 bills of entry, they declared the product as Apatite (Gr) Calcium Phosphate and classified the same under CTH 25102030 and claimed concessional duty. After the investigation began, they again, without any rhyme or reason, started filing bills of entry declaring the product as Calcium Phosphate and classifying under CTH 28352690**. For hiding the act of misdeclaration of the goods, they have created false documents with the assistance of their suppliers. They also approached and obtained a favourable analysis from the CSIR, Khurja. This clearly shows their malafide intention of manipulating the documents when investigations were initiated against them. **Even prior to initiation of investigations, they have deliberately and knowingly misdeclared Calcium Phosphate as Apatite (Gr) Calcium Phospate classified the same under CTH 25102030 and claimed concessional duty with an intent to evade payment of duty**."
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> **[emphasis supplied]**

9. The Commissioner finally held :

> **"19**. **In view of the above discussions, I have no hesitation in holding that the goods imported by the noticee under the 6 bills of entry in question are Calcium Phosphate and are appropriately classifiable under CTH 28352690. I also have no hesitation in holding that the noticee has deliberately and intentionally mis-classified the goods i.e. Calcium Phosphate imported by them**

> **under the 6 bills of entry with an intent to evade duty by way of availing concessional duty fraudulently. Had the Department not initiated investigations against them, the said misdeclaration and consequent evasion of duty would not have been detected leading to loss of revenue to the Government exchequer. The duty of Rs. 62,73,341/- so evaded by them is liable to be recovered from them in terms of provisions contained under Section 28(4) of the Customs Act, 1962 alongwith interest at applicable rates,** in terms of Section 28 AA of the Customs Act, 1962. They were required to file Bills of entry with correct description and correct classification of the goods. In the self assessment regime, the onus to file true and correct details in the Bills of entry lies on the importer which they have failed to do. In this manner, they have contravened the provisions of Section 46(4) and Section 46(4A) of the Customs Act, 1962."
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> **[emphasis supplied]**

10. The Commissioner thereafter confiscated the goods under section 111(m) of the Customs Act for the reason that the description and classification of the goods was misdeclared by the appellant deliberately with an intent to evade payment of duty. The Commissioner further imposed penalty under section 114A of the Customs Act and as the appellant had misdeclared the description and classification of the goods deliberately with intent to avail concessional rate of duty.

11. The Commissioner also imposed penalty upon Vikas Agarwal, Director of the appellant for the following reasons :

> **"22.3.** As alleged in the show cause notice, Shri Vikas Agarwal, Director was looking after all the import related work. The e-mail communications between him and the supplier and others shows that he manipulated/doctored the documents to be submitted to the Customs Authority with intent to mislead the Customs Authority with sole

> motive of bypassing legal requirement of NOC & to evade duty. Despite having knowledge of the fact that the goods imported were Calcium Phosphate, he has consciously and deliberately indulged in misdeclaration and mis-classification of the goods imported in the name of Apatite (GR) Calcium Phosphate under Chapter Heading 25102030 instead of Calcium Phosphate under HSN 28352690. In fact, he was even in constant touch with the suppliers and with another person Sh. Anuj Kumar Mittal against whom also investigations were being undertaken by the Department for similar offence. From his suppliers he has obtained documents and information as per his say which suited his version in the matter. After obtaining the same, he has also produced the same before Customs officers investigating the matter. Therefore, I have no hesitation in holding him to be liable for penal action under Section 114AA."

12. The Commissioner also imposed penalty upon Dharam Chand Sahu, Manager of the appellant for the following reasons:

> **23.2.** Shri Dharam Chand Sahu, Manager was also looking after work related to Import & Export. He has also indulged in manipulation of documents and email-communication between him and the supplier clearly establishes that he has helped Sh. Vikas Agarwal, Director in manipulating documents. This has also that resulted in mis-classification of the goods imported in the name of Apatite (GR) Calcium Phosphate under Chapter Heading 25102030 instead of Calcium Phosphate under HSN 28352690 leading to evasion of duty. Therefore, I have no hesitation in holding that Shri Dharam Chand Sahu, Manager is also liable to be penalised in terms of Section 112(a)(ii) of the Customs Act, 1962."

13. Shri Madhu Sudan Sharma, learned counsel appearing for the appellant made the following submissions :

(i) The appellant had imported Apatite Calcium Phosphate from M/s Global Ceramic Material

Limited which deals with natural products as is evident from the website. Harmonized System of Nomenclature[5] classification for Chapter sub-heading 2835 at the foot note clearly states that Natural Calcium Phosphate Apatite and Natural Aluminium Calcium Phosphate are excluded;

(ii) The officers of the department visited the factory of the appellant on 26.11.2020 and resumed several documents which have been relied upon in the impugned show cause notice. However, no sample was drawn by the department nor any test was conducted by the department of the imported goods. Therefore. The entire case is based on presumptions and assumptions.

(iii) In the absence of any test report, the department is bound to accept the classification submitted by the appellant on the basis of the documents and literature supplied by the importer. To support this contention, learned counsel placed reliance upon the decision of the Tribunal in **M/s Asian Granito India Limited** vs **CC, Mundra**[6];

(iv) The appellant had no intention to mis-declare the goods and there is no proof available either written or verbal to support the contention of the department;

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5 HSN

6 Customs Appeal No. 11292 of 2017 decided on 25.08.2020

(v) The intimation of the supplier that Apatite Calcium Phosphate is classifiable under Chapter 28 as per their tax department is based on their internal tax section;

(vi) In respect of the correspondence with the supplier, the appellant was trying to clear doubts and had never asked them to mis-declare the goods to be supplied by them. Manipulation of any document was not done by the appellant and the goods were correctly declared as Apatite Calcium Phosphate;

(vii) The material imported by the appellant is mined and is called Apatite Calcium Phosphate, which is in the raw form. It is then washed, dried, and heated to remove impurities but the chemical formula remains the same as no chemical change occurs during the entire process. The Apatite Calcium Phosphate and Calcium Phosphate are chemically the same product which have three portions of phosphate. Thus the chemical name is Tri Calcium Phosphate which is commercially known as Apatite Calcium Phosphate/Calcium Phosphate and is called TCP in short;

(viii) During the investigation, the officers summoned Vikas Agarwal and Dharam Chand Sahu several times and recorded their statements on various occasions. These two did not accept that the goods

imported through the six Bills of Entry were Calcium Phosphate and not Apatite Calcium Phosphate;

(ix) The technical expert had clearly opined that calcined material cannot be used for manufacture of ceramic tableware. The appellant is engaged in the manufacture of ceramic tableware and the imported goods were used in the manufacture of the final products; and

(x) Even natural calcium phosphate is classified under sub-heading 2510 20.

14. Shri Shiv Shankar, learned authorized representative appearing for the department, however, supported the impugned order and made the following submissions :

(i) The scope of Chapter 25 is limited to crude natural products. The goods that have undergone calcination, roasting, thermal decomposition or chemical processing are excluded from Chapter 25;

(ii) The evidence on record establishes that the imported goods were subjected to calcination and high-temperature processing (800-900°C), which alters the crystalline structure of natural phosphate. The correspondence of the supplier explicitly referred to the operation of a calciner and acknowledged quality issues arising therefrom, confirming that the product was thermally processed. Calcination, being a process of controlled thermal decomposition, transforms the

natural mineral into a chemically modified product, thus bringing it squarely under CTI-2835 26 90 (Other phosphates of calcium) within Chapter 28;

(iii) Both the product data sheet of the supplier and the own documentation of the appellant describe the goods as Tri-Calcium Phosphate[7]. TCP is a chemically defined compound and is specifically enumerated under Heading 2835 - "Phosphinates, phosphonates, phosphates and polyphosphates". Therefore, classification under Chapter 28 is not only consistent with the nature and chemical composition of the product but also mandated by the systematic and scientific interpretation under the Tariff;

(iv) E-mails exchanged between the appellant and the overseas supplier reveal that the supplier's European Head Office and Tax Department had categorically advised that the product "Apatite (Ground) Calcium Phosphate" had been wrongly classified under Chapter 25 and that the correct classification was under Chapter 28. Despite such knowledge, the appellant persisted in declaring the goods under Chapter 25, thereby availing an illegitimate concessional rate of duty (5% instead of 18%);

(v) The following will demonstrate a concerted effort by the appellant to fabricate and modify documents to conceal the true nature of the goods :

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7 TCP

(a) The importer requested the supplier to remove references to calcination and to "back-date" technical data sheets by 1-2 years;

(b) The importer sought alternative product descriptions ("Calcium Phosphate Grade-1" instead of "Apatite (GR) Calcium Phosphate") to avoid suspicion during customs clearance; and

(c) The directive to declare all CP material as "uncalcined" despite factual processing constitutes clear evidence of *mens rea* and intent to mislead.

(vi) The correct classification under CTI 2835 26 90 attracts not only a higher rate of duty but also the requirement of a No-Objection Certificate (NOC) from the Drug Control Department under the Drugs and Cosmetics Act, 1940. The deliberate choice to misclassify under Chapter 25 was thus intended both to evade payment of duty and to circumvent mandatory import controls;

(vii) Vikas Agarwal, Director of the appellant was directly responsible for overseeing all import related activities of the company, including classification, documentation, and correspondence with foreign suppliers;

(viii) The e-mail communications retrieved during investigation between Vikas Agarwal, the supplier (M/s Global Supplies), and other associated persons clearly demonstrate his active involvement in manipulating and fabricating documents intended for submission

before the Customs Authorities. The intent behind such manipulation was to mislead the Department, thereby bypassing the statutory requirement of obtaining a No Objection Certificate (NOC) from the Drugs Control Department and to evade payment of legitimate Customs duty;

(ix) Despite being fully aware that the imported goods were calcined calcium phosphate and correctly classifiable under CTI 2835 2690, Vikas Agarwal consciously and deliberately misdeclared and misclassified the same as Apatite (GR) Calcium Phosphate under CTI 2510 2030, availing a concessional duty rate;

(x) The evidence further establishes that Vikas Agarwal was in continuous communication not only with the supplier, but also with Anuj Kumar Mittal, another importer under investigation for a similar offence, thereby suggesting collusion and shared intent to misdeclare goods. It is evident that Vikas Agarwal procured documents and technical data from the supplier in accordance with his own instructions, ensuring that such documents supported his false version regarding the classification of the goods. He subsequently submitted these manipulated materials to the investigating officers in an attempt to substantiate his misdeclaration;

(xi) Dharam Chand Sahu, Manager of the appellant was responsible for handling the import and export operations of the company, including documentation, correspondence with suppliers, and coordination of import clearances;

(xii) The investigation revealed that Dharam Chand Sahu actively assisted Vikas Agarwal, Director of the appellant in the manipulation and fabrication of import related documents and in the preparation of misleading communications with the overseas supplier. The email correspondence between Dharam Chand Sahu and the supplier establishes his direct involvement in drafting and altering documents in a manner intended to support the false declaration of the goods as Apatite (GR) Calcium Phosphate under CTI 2510 20 30, instead of their correct classification as Calcium Phosphate under CTI 2835 26 90; and

(xiii) The role of Dharam Chand Sahu amounts to abetment of an act rendering the goods liable to confiscation under section 111 of the Customs Act. His conduct clearly attracts penal consequences under section 112(a)(ii) of the Customs Act, as he knowingly participated and assisted in the commission of the offence.

15. The submissions advanced by the learned counsel appearing for the appellant and the learned authorized representative appearing for the department have been considered.

16. The issue that arises for consideration is whether the goods imported by the appellant and declared as Apatite (GR) Calcium Phosphate under CTI 2510 20 30 were correctly classified by the appellant or deserve to be classified under CTI 2835 26 90, as claimed by the department.

17. Heading 2510 of the Tariff Act deals with "natural calcium phosphates, natural aluminium calcium phosphates, and phosphatic chalk". The description of the goods under CTI 2510 20 30 is "**natural calcium phosphates apatite**"

18. On the other hand, Heading 2835 of the Tariff Act deals with "Phosphinates (hypophosphites), phosphonates (phosphites) and phosphates; polyphosphates, whether or not chemically defined". The relevant portion of the tariff entries are reproduced below :

Tariff Item	**Description of Goods**	**Unit**	**Rate of Duty**	
			Standard	**Preferential**
(1)	(2)	(3)	(4)	(5)
2835	**Phosphinates (hypophosphites), phosphonates (phosphites) and phosphates; polyphosphates, whether or not chemically defined**			
2835 10	- Phosphinates (hypophosphites) and phosphonates (phosphites			
2835 10 10	--- Calcium hypophosphite.	kg.	7.5%	-
2835 10 20	--- Magnesium hypophosphite.	kg.	7.5%	-
2835 10 90	--- Other	kg.	7.5%	-
	- Phosphates :			
2835 22 00	-- Of mono-or disodium.	kg.	7.5%	-
2835 24 00	-- Of potassium.	kg.	7.5%	-
2835 25 00	-- Calcium hydrogenorthophosphate ("dicalcium phosphate").	kg.	7.5%	-
2835 26	-- Other phosphates of calcium :			
2835 26 10	--- Calcium monobasic phosphate.	kg.	7.5%	-
2835 26 20	--- Calcium tribasic phosphate.	kg.	7.5%	-
2835 26 90	**--- Other . . . . . .**	**kg.**	**7.5%**	**-**

19. The HSN Explanatory Notes to Chapter 25 restrict the scope of the products to products which are in the crude state or which have been subjected merely to mechanical or physical processes, such as, washing, crushing, grinding or screening, without altering the chemical structure of the substance. Goods that have undergone calcination, roasting, thermal decomposition or chemical processing stand excluded from Chapter 25, unless expressly provided.

20. Chapter 28, on the other hand, covers phosphates of calcium that include precipitated calcium phosphate i.e ordinary calcium phosphate and is used in the manufacture of glass or pottery.

21. The impugned order has placed much reliance on the emails exchanged between the appellant and the suppliers. After consideration of the emails dated April 06, 2019, February 12, 2020 and February 13, 2020, the Commissioner drew a conclusion that the emails show that the suppliers of the appellant are clear that apatite calcium phosphate supplied by them to the appellant are not classifiable under Chapter 25, but are appropriately classifiable under Chapter 28. The emails also show that the appellant had requested the supplier that they are unable to use the name "Apatite Calcium Phosphate" for goods under Chapter 28. What is also important to note is that in the email dated February 29, 2020, the appellant requested the supplier to remove the line that mentions that "the product is classified by the chemical and taxable department of the supplier under Chapter 28".

22. The Commissioner has also referred to the email dated February 13, 2020 sent by the supplier. The relevant portion of this email is reproduced below :

> "Technical.....The waterground Phosphates of calcium grade utilises the basic Calcium Phosphate material which is then further processed via a ball mill and a series of chemical additions to render the material suitable for the world's premier producers of fine bone china tableware such as Wedgwood, Noritake, Villeroy&Boch, to name but three. This product carries a price premium over Calcium Phosphate due to its ability to maximize client yields in modern automatic production lines. **This material is also classified under HS Code 28 35 26 90 due to the use of the Calcium Phosphate raw material**....If above is acceptable then Tracey can provide you with a list of invoice numbers, volumes and dates since Clay Craft started purchasing material from Global in April 2019. **This will not include the invoice for CC2004 as per your Whatsapp message**.....If the above is acceptable and needs to be printed tomorrow our Operation Director can sign the document vis pp in my absence and Trace can sent the scan copy on a letterhead."

23. This email sent by the supplier mentions the processes that basic calcium phosphate has undergone, including the chemical additions that has rendered the material suitable for fine bone china tableware and that product would be classifiable under CTI 2835 26 90.

24. In the email dated March 15, 2020, Vikas Agarwal requested the supplier to remove the word 'calcination' and use 'heating' instead. This clearly shows that the supplier was asked to state that the product supplied had not undergone calcination because if the process of calcination had been undertaken, the

product would be classified under Chapter 28 and not under Chapter 25.

25. In connection with investigation carried out by the department against another importer, namely, Mudrika, emails dated September 11, 2020 and September 12, 2020 were also exchanged between Vikas Agarwal, Director of the appellant and Anuj Kumar Mittal, Director of the Mudrika. In the context of these emails, the Commissioner has observed :

> **"10.9**…….Discussion between Sh. Vikas Agarwal and Sh. Anuj Kr Mittal of Mudrika against whom also investigation by DRI is undertaken. **The words "all the CP material need to be declared uncalcined" and "No where we have to admit that there was some mistake or something" clearly shows that they are aware of the mistake and that the products earlier imported were actually calcined**.
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> **11**. All these Emails have been shown to Sh. Vikas Agarwal, Director during his statements and he has admitted that these emails were true and had been exchanged by him with the suppliers. I also find that during the course of investigations, the noticee did not submit these Email communications. The investigations got hold of these Emails through DRI who were investigating a different importer M/s Mudrika. Thus, the claim of the noticee that they had come clean on the issue and their bonafides were established because of these Emails is not correct."

26. From all the aforesaid emails, the Commissioner concluded :

> **"12**. **From these evidences, it is clearly evident that the goods that had been imported in the past, under the cover of the six Bills of entry in question, were calcined. The other aspect, that is emerging is that their supplier is also sure that Apatite (Gr) Calcium Phosphate, which they had supplied under the six Bills of entry in question, were also calcined**

and were appropriately classifiable under CTH 28352690. They have quite categorically confirmed that there has been a mistake and as per their HQs and the Taxation Department, the Apatite (Gr) Calcium Phosphate appropriately fall under CTH 28 and not under CTH 25. In fact, the Mudrika decision of Commissioner Appeals has also been considered by their suppliers before arriving at the conclusion that the goods supplied were correctly classifiable under CTH 2835, the six consignments in dispute or the goods that they were to supply subsequently. **The conclusion drawn is that whether the goods are named as Calcium Phosphate or as Apatite (Gr) Calcium Phosphate, the same are correctly classifiable under CTH 28352690**.

16. I also observe that prior to May 2019, the assessee were importing Calcium Phosphate under CTH 28352690. In the instant 6 bills of entry, they declared the product as Apatite (Gr) Calcium Phosphate and classified the same under CTH 25102030 and claimed concessional duty. After the investigation began, they again, without any rhyme or reason, started filing bills of entry declaring the product as Calcium Phosphate and classifying under CTH 28352690. For hiding the act of misdeclaration of the goods, they have created false documents with the assistance of their suppliers. They also approached and obtained a favourable analysis from the CSIR, Khurja. This clearly shows their malafide intention of manipulating the documents when investigations were initiated against them. Even prior to initiation of investigations, they have deliberately and knowingly misdeclared Calcium Phosphate as Apatite (Gr) Calcium Phosphate classified the same under CTH 25102030 and claimed concessional duty with an intent to evade payment of duty.

19. **In view of the above discussions, I have no hesitation in holding that the goods imported by the noticee under the 6 bills of entry in question are Calcium Phosphate and are appropriately classifiable under CTH 28352690. I also have no hesitation in holding that the noticee has deliberately and intentionally mis-classified the goods i.e. Calcium Phosphate imported by them under the 6 bills of entry with an intent to evade**

> **duty by way of availing concessional duty fraudulently**. Had the Department not initiated investigations against them, the said misdeclaration and consequent evasion of duty would not have been detected leading to loss of revenue to the Government exchequer. The duty of Rs. 62,73,341/- so evaded by them is liable to be recovered from them in terms of provisions contained under Section 28(4) of the Customs Act, 1962 alongwith interest at applicable rates, in terms of Section 28AA of the Customs Act, 1962. They were required to file Bills of entry with correct description and correct classification of the goods. In the self assessment regime, the onus to file true and correct details in the Bills of entry lies on the importer which they have failed to do. In this manner, they have contravened the provisions of Section 46(4) and Section 46(4A) of the Customs Act, 1962."
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> **[emphasis supplied]**

27. It is, therefore, clear that the Commissioner concluded that the goods imported through the six Bills of Entry were calcined and would not fall under Chapter 25 of the Tariff Act and will fall under Chapter 28 of the Tariff Act. This inference also finds support from the communication sent by the supplier that since the goods were calcined, they would be appropriately classifiable under CTI 2835 26 90. It is also seen that prior to May, 2019 the appellant imported calcium phosphate under CTI 2835 26 90 and after investigation again started filing Bills of Entry declaring the product as 'calcium phosphate' and classified it under CTI 2835 26 90. It is only in respect of the six Bills of Entry during the interregnum period that the appellant described the product as Apatite (GR) Calcium Phosphate in the six Bills of Entry and classified it under CTI 2510 20 30.

28. The aforesaid conclusions have been drawn by the Commissioner from the emails that were exchanged between the

appellant and the supplier and cannot be said to be perverse. The emails clearly show that even the supplier was of the opinion that the goods were classifiable under Chapter 28 and not under Chapter 25 and that calcination process had been undertaken. The appellant objected to the use of the word 'calcination' by the supplier with the sole purpose of making out a case that the goods would be classifiable under Chapter 25.

29. There was no occasion for the department to have carried out tests of the goods that were imported because they had been cleared and investigation had started later. The emails exchanged between the appellant and the suppliers clearly show that the appellant was trying to manipulate the records with the intention of evading appropriate customs duty. The Commissioner was, therefore, justified in holding that the appellant deliberately misdeclared the description of the goods and its classification with the sole intention of evasion of duty. The impugned order, therefore, directs for payment of differential duty and, therefore, does not call for any interference.

30. The next issue that arises for consideration is whether the goods were liable to confiscation under section 111(m) of the Customs Act. As the goods did not correspond in respect of the value and other particulars declared in the Bills of Entry, they were liable to confiscation but since they were not available for confiscation, a fine of Rs. 70 lacs in lieu of confiscation was correctly imposed upon the appellant.

31. Penalty under section 114A of the Customs Act has also been correctly imposed upon the appellant as the appellant had misdeclared the description of the goods deliberately with an intent to avail concessional rate of duty and thereby to evade payment of duty.

32. The impugned order has also given cogent reasons for imposing penalty on Vikas Agarwal, Director of the appellant under section 112(a)(ii) of the Customs Act. As would be seen from the impugned order, the relevant portion of which have been reproduced above, the email communications show that Vikas Agarwal manipulated the documents to be submitted to the customs authorities intentionally and obtained documents from the supplier to suit his version. Therefore, imposition of penalty on him under section 114AA of the Customs Act is justified.

33. The imposition of penalty upon Dharam Chand Sahu, Manager of the appellant under section 112(a)(ii) of the Customs Act is also justified as it has been found from the email communications that he helped Vikas Agarwal in manipulating the documents.

34. There is, therefore, no error in the impugned order. All the three appeals are, accordingly, dismissed.

(Order pronounced on 27.04.2026)

(JUSTICE DILIP GUPTA)
PRESIDENT

(S.V. SINGH)
MEMBER (TECHNICAL)

Golay