

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 25401 of 2013

(Arising out of Order-in-Original No.18/2012 dated 01.11.2012
passed by the Commissioner of Customs, Cochin.)

**M/S. SAINT-GOBAIN INDIA PVT.
LTD.**

**(Formerly known as SEPR
Refractories India Limited)**

Kanjikode West,
Palakkad - 678 623.

Appellant(s)

VERSUS

The Commissioner of Customs

Customs House,
Cochin - 682 009.

Respondent(s)

APPEARANCE:

Mr. Anil Kumar. B, Advocate for the Appellant.

Shri M. Sreekanth, Asst. Commissioner (AR) for the Respondent.

**CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER
(TECHNICAL)**

FINAL ORDER NO. 20408 /2026

DATE OF HEARING: 26.09.2025

DATE OF DECISION: 24.03.2026

PER: R. BHAGYA DEVI

This appeal arises out of Order-in-Original No. 18/2012 dated 01.11.2012 passed by the Commissioner of Customs, Cochin which is filed by the appellant M/s. Saint-Gobain India

Pvt. Ltd. (Formerly known as M/s. SEPR Refractories India Ltd.) a subsidiary group of M/s. Saint Gobain SEPRO, in India.

2. The appellant had filed 44 Bills of Entry during the period 13.01.2011 to 06.01.2012 for clearance of goods imported and declared as 'Expanded Space Fire Clay Grog' classifying the same under CTH 6902 9010 and were assessed to duty without any examination and cleared for home consumption. However, the consignment imported vide Bill of Entry No. 3698261 dated 03.06.2011 and Bill of Entry No.5363159 dated 02.12.2011 was subjected to lab analysis after samples were drawn from the same. Based on the lab analysis report and as per the technical data of the products, the Commissioner in the impugned order rejected the declared Customs Tariff Heading (CTH) 6902 9010 and reclassified them under CTH 6806 2000 and demanded differential duty of Rs.15,11,499/- along with interest under Section 28AA of the Customs Act, 1962 and imposed equivalent penalty under Section 114A of the Customs Act, 1962. Aggrieved by the above observations of the Commissioner, the appellant is in appeal before us.

3. The Learned Counsel for the appellant referring to the technical writeup placed on record as Annexure-8 submits that the raw materials are shaped to spherical pellets and then fired, hence, rightly classifiable under CTH 6902 and the basis for reclassifying under CTH 6806 by the Revenue is without any legal or technical/documentary evidences. It is further submitted that the technical writeup of the manufacturer and certification issued by an independent body i.e. British Ceramic Confederation which is placed on record also justifies their classification. Relying on the Chemical Examiner's reports also, it is stated that the product in question was said to be composed of silicates of aluminum and the product is ceramic. It is further

submitted that the request of the appellant to visit the factory was also not undertaken and without any basis, the products are reclassified. It is further submitted that the subsequent imports made in 2014 of the very same products were classified and cleared under CTH 6902 9010 without any dispute. With regard to limitation, it is submitted that in June 2011, the Chemical Examiner certified that the impugned products were ceramic products and fired after shaping. There was no misdeclaration or misrepresentation of facts which have been put forth by the Revenue for invoking extended period of limitation, hence, the demand cannot be sustained. Reliance is placed on the following decisions:

- **Quinn India Ltd. Vs. CCE, Hyderabad 2006 (198) ELT 326 (SC)**
- **H.P.L Chemicals Ltd. Vs. CCE, Chandigarh 2006 (197) ELT 324 (SC)**
- **Reliance Cellulose Products Ltd. Vs. CCE., Hyderabad 1997 (93) ELT 646 (SC)**
- **Kuchchal Chemicals Ltd. Vs. CCE., Lucknow 2013 (288) ELT 585 (Tri.-Del.)**
- **Bandana Overseas Vs. CC (Port), Kolkata 2009 (235) ELT 165 (Tri.-Kolkata)**

4. The learned Authorised Representative for the Revenue submitted that during the course of post-audit of the Bills of Entry, it was noticed that the packing list and dispatch notes issued by supplier M/s. Alfa Aggregates Product Ltd. the Customs Control Number (CCN) has been clearly mentioned as 6806. On further investigation, it was found that the impugned goods were not fired after shaping as per the writeup given by the appellant. The Chemical Examiner's test report based on visual inspection asserts that the impugned products have no definite shape, also the suppliers letter dated 21.12.2011 states that the goods are shaped before firing, hence, the Commissioner was justified in reclassifying the goods under CTH 6806 and demanding differential duty by invoking extended

period of limitation. Reliance is placed on the decision of the Hon'ble Supreme Court in the case of *Union of India Vs. Dharamendra Textile Processors 2008 (231) ELT 3 (S.C.)*.

5. Heard both sides. The only issue to be decided is whether the impugned products 'Expanded Space Fire Clay Grog' are rightly classifiable under CTH 6902 9010 as claimed by the appellant or to be classified under 6806 2000 as claimed by the Revenue. The relevant entries are reproduced below:

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;

6902 Refractory Bricks, Blocks, Tiles and Similar Refractory ceramic Constructional Goods, other than those of Siliceous Fossil Meals or Similar Siliceous Earths

6902 20 - Containing by weight more than 50% of alumina (Al₂O₃), of silica (SiO₂) or of a mixture or compound of these products:

6902 20 10 --- Silica bricks and shapes

6902 20 20 --- High alumina bricks and shapes

6902 20 30 --- Alumina carbon bricks and shapes

6902 20 40 --- Silicon Carbide bricks and shapes

6902 20 50 --- Mullite bricks

6902 20 90 --- Other

6902 90 - Other:

6902 90 10 --- Fire clay bricks and shapes

6902 90 20 --- Graphite bricks and shapes

6902 90 30 --- Vermiculite insulation bricks

6902 90 40 --- Clay graphite stopper heads

6902 90 90 --- Other

6806 Slag Wool, Rock Wool and Similar Mineral Wools; Exfoliated Vermiculite, **Expanded Clays**, Foamed Slag and Similar Expanded Mineral Materials; Mixtures and Articles of Heat insulating, Sound-Insulating or Sound- Absorbing Mineral Materials,

other than those of Heading 6811 or 6812 or of Chapter 69

6806 10 00 - Slag wool, rock wool and similar mineral wools (including intermixtures thereof), in bulk, sheets or rolls

6806 20 00 - Exfoliated vermiculite, expanded clays, foamed slag and similar Expanded mineral materials (including intermixtures thereof)

6. The only contention of the Department is that CTH 6902 includes only those ceramic products which are fired after shaping and expanded clays are categorically listed under CTH 6806 2000. In Contra, it is the contention of the appellant that the impugned products are rightly classifiable under CTH 6902 as 'Fire clay bricks and shapes' since they are ceramic products and shaped before firing.

7. The technical literature given by the manufacturer (supplier) is reproduced below:



Alfa Aggregates Products Limited
Kingsley Works, Kingsley
Nr Cheadle, Staffordshire, ST10 2DQ
Tel: 01538 754 773
Fax: 01538 750 280
Email: info@alfaaggregates.com

Expanded Fireclay Grog (EFG)

Manufacture

Specially selected Fireclays are sintered on a moving hearth to form a porous ceramic Sinter. Following a cooling period, the sinter is graded and screened into fractions thus producing a range of grain sizes to suit market requirements.

The Alfa refractory aggregates have low bulk density, high thermal insulation and refractoriness. All grades are sold world-wide for a range of applications.

Applications

- Insulating refractory concretes for casting and gunning
- Additions to clay mixes to produce semi-insulating firebricks
- Back up insulation as loose fill and no-fines concretes
- High temperature ladle cover compositions
- Filler for ingothead tiles in steelmaking
- Filtration
- Annealing media for glass manufacture

Packing

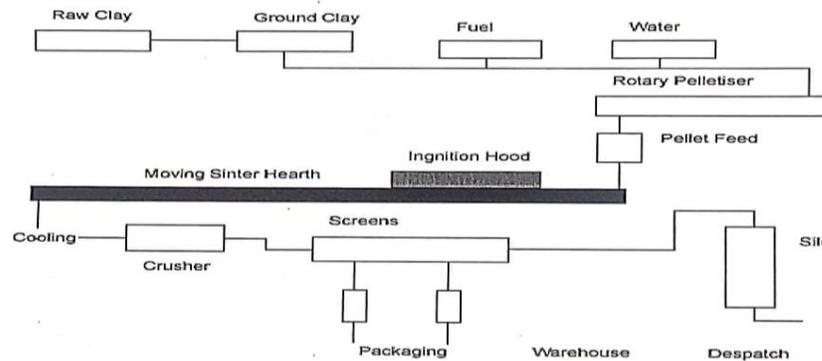
- Polythene valve sacks 20-25kg each depending on grain size, shrink wrapped on pallets 1.0-1.2 tonnes per pallet
- IBC's 1.0-1.2 tonnes per bag. Also half size bag available
- Loose bulk available in bulk tipper or silo tanker

Special packing available to customer specification by arrangement.

Export

Export to many countries is carried out by using selected pack sizes to achieve full payload.

Containers to deep sea destinations are filled to capacity to minimise shipping costs. 40ft containers can be filled with IBC's or palletised sacks.

ProcessProcess Description

Selected virgin fireclays are pan-ground, blended with fuel and passed through a rotary pelletiser and shaped to produce a spherical pellet which is then sintered on a moving hearth at high temperature. After cooling, the sinter cake is graded, screened and packaged to suit customer requirements.

Aggregates are available in loose bulk, bulk-bags and sacks on pallets.
Loads are suitably packed for export to world-wide destinations.

From the above literature, we find that it is no doubt a ceramic product and also it states that 'it is shaped to produce a spherical pellet which is then sintered on a moving hearth at high temperature', thus satisfying the condition of the chapter note -1 of CTH 69 'fired after shaping'.

8. Now, we let's examine the letter issued by the British Ceramic Confederation which states that the final product is wholly ceramic and that prior to firing, the raw material is shaped. The letter is reproduced below:

**BRITISH
ceramic
CONFEDERATION**

Federation House, Station Road, Stoke on Trent, ST4 2SA
Tel: (01782) 744631 Fax: (01782) 744102
e-mail: bcc@ceramfed.co.uk web: www.ceramfed.co.uk

TO WHOM IT MAY CONCERN

Dear Sir /Madam

EXPANDED FIRECLAY GROG

The British Ceramic Confederation (BCC) represents the collective interests of all sectors of the UK ceramics manufacturing industry. The BCC safeguards the industry's prosperity, acting on its behalf in discussions and negotiations with government and public authorities.

The BCC has been contacted by Alfa Aggregates Limited with a view to offering an opinion on the nature and characteristics of one of its products, known as Expanded Fireclay Grog.

We have visited the company and examined the manufacturing process from raw material through to finished product. It is clear from our examination that the final product is wholly ceramic and that prior to firing, the raw material is shaped.

Yours faithfully

Francis Morrall
Deputy Chief Executive & Employment Director
British Ceramic Confederation

Tel: 01782 744631 Fax: 01782 744102
Direct Dial: 01782 572846 francism@ceramfed.co.uk
Mob: 07802 570887 web: www.ceramfed.co.uk
Read our "key priorities for the new government"

9. Now, we let's examine the test reports given by the Chemical Examiner for the samples drawn against Bill of Entry No. 3698261 dated 03.06.2011. The report is reproduced below; where it states that 'the matter is examined, the sample u/r is ceramic material in the form of irregular lumps (fired after shaping). Similarly, the samples drawn from the Bill of Entry No.5363159 dated 02.12.2011, the report of which is also placed below states that it is mainly composed of silicates of aluminium and lab is not equipped to state whether the sample u/r is 'fixed after shaping or not'. It also states that the sample has the composition of fire clay and if required, the sample may be forwarded to IBM Bangalore. However, we do not find any sample being forwarded to IBM Bangalore.

Chemical Examiner's report against samples drawn from Bill of Entry No. 3698261 dated 03.06.2011

Lab No. 6511/13-6-11
 Method of manufacture and certificate of analysis (67) of the spl u/r received here from the party/importer 21/6/11.
 The analytical findings obtained in this laboratory for the spl u/r are in general agreement with the ^{those given in} certificate of analysis for fire clay group submitted by the party/importer.
 22/06/11
 However, lab has not answered to the query as to whether these are ceramic items fired after shaping? so as to decide the classification. Hence we may request CO to clarify the above as per pl.
 23/6/11
 Pl. examine & put up.
 Res cm
 23/6/11
 The matter is examined, the sample u/r is ceramic material in the form of irregular lumps (fired after shaping).
 24/6/11
 [Signature]

based on the manufacturing process. However, we find that the manufacturer's letter produced at paragraph 7 clearly states that goods are of ceramic and are shaped before firing.

10. In a similar set of facts, the Hon'ble Supreme Court in the case of **Quinn India Ltd. Vs. CCE, Hyderabad** (supra), their Lordships have observed that:

"7.The Tribunal has completely ignored the Report of the Chemical Examiner dated 6-10-1981 and the Final Opinion of the Chief Chemist dated 2-4-1992 coupled with the classification issued by the Department regarding use of wetting agents in the textile industries falling under tariff item No. 3402.90. Test Report of the Chemical Examiner and Chief Chemist of the Revenue unless demonstrated to be erroneous, cannot be lightly brushed aside. The Revenue has not made any attempt to discredit or to rebut the genuineness and correctness of the Reports of the Government, Chemical Examiner and Chief Chemist".

11. Similarly, in the case of **Reliance Cellulose Products Ltd. Vs. Collector of Central Excise, Hyderabad** (supra), the Hon'ble Supreme Court has observed as follows:

"12.We were referred to a number of test reports obtained by the appellant from various persons and on the basis of these opinion, the reports of the Departmental Chemical Examiner and also the Chief Chemist were assailed. We are of the view that the Assistant Collector cannot be said to have erred in relying upon the reports given by the Chemical Examiner and the Chief Chemist. It may be that in a given case, the report of the Chief Chemist may be demonstrated to be palpably wrong. In such a case, the Court may direct re-examination of the whole issue. But that is not the case here. It has not been shown that the Chemical Examiner or the Chief Chemist were in error in their analysis in any way. The views expressed by the Chief Examiner and Chief Chemist of the Government cannot be lightly brushed

aside on the basis of opinion of some private persons obtained by the appellant."

12. In view of the above decisions, we do not find any justification in the findings of the Commissioner in the impugned order in rejecting the Chemicals Examiner's reports. Therefore, accepting the Chemical Examiner's report based on the description of the products, classification of the impugned product is upheld under CTH 6902 9010.

13. We also find that the Bill of Entry filed by the appellant which is reproduced below gives the description of the products as 'Expanded Fire Clay Grog' (Refractory products fired after shaping) and classified the same under 6902 9010. Thus, there is clear description of the products, hence, there is no question of misrepresentation/suppression of facts.

Original (Customs copy)
Indian Customs EDI System - Imports V1.5R001
COCHIN CUSTOM HOUSE WILLINGDON ISLAND COCHIN62009
BILL OF ENTRY FOR HOME CONSUMPTION

[Custom Stn: INCOK1] CHA : ABFN9977GCH02 [NATIONAL TRADES & AGENCIES]
BE No/Dt./cc/Typ:5037701/28/10/2011/N/H
Importer Details : 1002001153 PAN : AAFCS6190KFT001
SEPR REFRACTORIES INDIA LIMITED
2 :V/16-25, KANJIKODE WEST,
PALAKKAD, KERALA 678623

IGM No :2022982/26/10/2011 27/10/2011 Port Of Loading :Thamesport
Cntry Of Orgn.: UNITED KINGDOM Cntry Of Consgn.:
BL No : EGLV510100099636 H/BL No : 6760041764
Date : 03/10/2011 Date : 03/10/2011
No. Of Pkgs. : 20 FLT Gross Wt. : 30000.000 KGS
Marks:NIL
& Nos

Inv No & Dt. : 11575 28/09/2011 ALFA AGGREGATES PRODUCTS
Inv Val : 2050.65 GBP TOI: FOB LIMITED KINGSLEY WORKS,
Freight : 91346.97 INR KINGSLEY, NR CHEADLE, STAFFORDSHIRE,
Insurance : 132.42 INR 5710 2DG ENGLAND
SVB Load(Ass): Cust. House: UNITED KINGDOM
SVB Load(Dty): HSS Load Rate: 0.00% Amount: 0.00
Misc. Charges: 0.00 Discount Rate: 0.00 Discount Amount: 0.00
Item Details Exchange rate: 1.00 GBP = 77.5000 INR

Sino	RITC	Description	CTH	C. Notn	E. NSNO	RSP	Lead	PROV
Qty	Unit	Unit Price	CETH	E. Notn	E. NSNO	Exc Dty Rt	BCD amt (Rs)	CVD amt (Rs)
1		69029010 E.F.G BIG BAGS 10-5MM- EXPANDED FIRECLAY GROG (REF						
		FACTORY PRODUCTS FIRED AFTER SHAPPING]						
14.70		139.500000	69029010	021/2002	456	5.00 %	12645.40	
MTS		252908.81	69029010	002/2003	48	10.00 %	26555.40	
						2.00 %	531.10	
		Educational Cess on CVD				1.00 %	265.60	
		Sec & Higher Edu. Cess on CVD				2.00 %	800.00	
		Customs Educational Cess				1.00 %	409.00	
		Customs Sec & Higher Edu. Cess				4.00 %	11764.30	
		Adtl Duty - (Imports)		019/2006				
	Rs.	252908.81						52961.80
	Rs.	252908.81						52961.80
	Rs.	12645.40						0.00
	Rs.	0.00						0.00
	Rs.	26555.40						0.00
	Rs.	0.00						0.00
	Rs.	0.00						800.00
	Rs.	531.10						11764.30
	Rs.	0.00						400.00
	Rs.	265.60						
	Rs.							

Declaration
1. I/we Certify that the above entries are correct.
2. I/we further declare that wherever the RSP is applicable same has been truthfully declared.

CHA NATIONAL TRADES & AGENCIES
Importer SEPR REFRACTORIES INDIA LIMITED

14. The Hon'ble Supreme Court in the case of **Uniworth Textiles Ltd. vs. Commissioner of Central Excise, Raipur: 2013 (288) E.L.T. 161 (SC)** has categorically held that when there is no suppression with intention to evade payment of duty, then invoking of extended period of limitation cannot be sustained. Therefore, we find that extended period of limitation cannot be invoked.

Appeal is allowed with consequential relief if any.

(Order pronounced in Open Court on 24.03.2026.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

rv