

**THE MAHARASHTRA APPELLATE AUTHORITY FOR ADVANCE RULING FOR GOODS AND SERVICES TAX****(constituted under Section 99 of the Maharashtra Goods and Services Tax Act, 2017)****ORDER NO. MAH/AAAR/SS-RJ/02/2018-19****Date- 02.08.2018****BEFORE THE BENCH OF****(1) Smt. Sungita Sharma, MEMBER****(2) Shri Rajiv Jalota, MEMBER**

GSTIN Number	27AABCH2726A1Z5
Legal Name of Appellant	Hafele India Private Limited
Registered Address/Address provided while obtaining user id	Office No. 3, Building "A" Beta, I – Think Techno Campus, OFF J.V.L.R., Opp. Kanjurmarg Station, Kanjurmarg (East), Mumbai – 400 042
Details of appeal	Appeal No. MAH/AAAR/04/2018-19 dated 10.05.2018 against Advance Ruling No. GST-ARA-10/2017/B-13 dtd. 20.03.2018
Concerned officer	Asstt. Commissioner, Range -III, Division -II, CGST, Navi Mumbai

**PROCEEDINGS****(under Section 101 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)**

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the MGST Act.

The present appeal has been filed under Section 100 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act"] by M/s.Hafele India Private Limited (herein after referred to as the "Appellant") against the Advance Ruling No. GST-ARA-10/2017/B-13 dtd. 20.03.2018.





**BRIEF FACTS OF THE CASE**

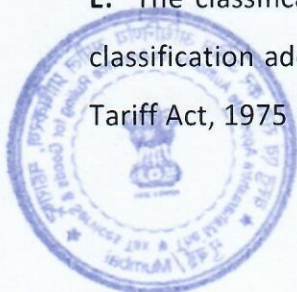
A. The Appellant is engaged in the business of importation of kitchen and bathroom fittings along with furniture and other home accessories (hereinafter called as 'goods') for onward selling. The Appellant, while importing these goods, is subject to Basic Customs Duty and Integrated Goods and Services Tax ("IGST") under Customs Tariff Act, 1975 on goods cleared for home consumption.

B. The Appellant also imports 'Caesarstone Quartz Surfaces' (hereinafter referred to as the said goods") for onward sale to domestic customers in India. The Appellant while importing the said goods is liable to pay Basic Customs Duty, Integrated Goods and Services Tax ("IGST") under Customs Tariff Act, 1975 on goods cleared for home consumption. Further on making the outward supply of the said goods, depending on the nature of supply, the appellant is liable to discharge the applicable tax i.e. Central Goods and Services Tax ("CGST") and State Goods and Services Tax ("SGST") or IGST as the case may be.

C. In the pre-GST regime, the, Appellant, being an Importer dealer, was not required to pay Excise duty on its sale to customers. It was merely liable to pay VAT/CST on such sale as per the rate schedule provided in the respective States VAT Act. Further, the rate Schedule under the respective VAT/CST laws was not linked to the HSN classification of the commodity. Under the Maharashtra Value Added Tax Act, 2005 ("MVAT Act"), Caesarstone was taxed at 13.50% VAT in terms of the residuary entry contained in Schedule E to the MVAT Act.

D. GST has been introduced w.e.f. July 1, 2017 which seeks to subsume most of the existing Indirect taxes. Further, the Government has also released various Schedules for classification of goods/services along with applicable GST rates. It is pertinent to note that unlike the VAT/CST laws, the GST rates have now been aligned to the HSN classification of the goods.

E. The classification of goods as per the GST rate Schedules has been aligned as per the classification adopted in the tariff entries provided under the First Schedule of the Customs Tariff Act, 1975 (hereinafter referred to as the "Customs Tariff Act").





F. The Appellant realized that Caesarstone merits classification under HSN 2506 of the GST Schedule, however, at the time of importation, the same is being classified in heading 6810 for the purpose of levy of BCD and IGST on the same.

G. The Appellant had initiated an application for an Advance Ruling before the Maharashtra Advance Ruling Authority for determination of the correct classification of Caesarstone under the Maharashtra Goods and Services Tax Act, 2017.

#### **ORDER PASSED BY AAR**

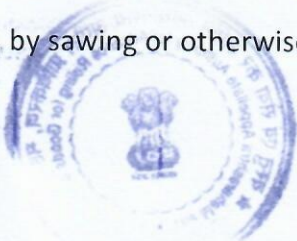
H. The Maharashtra Authority for Advance Ruling passed the order on 20.03.2018 holding that Caesarstone imported by the applicant (here, 'the Appellant') is to be classified under HSN code 6810.

I. Aggrieved by this Order, the Appellant has filed appeal before this appellate authority based on the grounds expatiated here-in-under:-

#### **GROUND OF APPEAL**

A. The Impugned Advance Ruling has been passed based on an incorrect reading of Heading 2506

1. In the Impugned Advance Ruling, the Learned AARM has read Heading 2506 to say that the kind of "quartz" that would be covered thereunder would be one which may or may not be roughly trimmed or merely cut with the method of cutting being specified as sawing or otherwise. Therefore, in the view of the Learned AARM, said goods can in no way be classified under Heading 2506.
2. In this context, it is pertinent to note that Chapter 25 of the Customs Tariff Act deals with "Salt; Sulphur; earths and stone; plastering materials, lime and cement" whereunder quartz is covered under heading 2506 in the following manner:  
'Quartz (other than natural sands); quartzite, whether or not roughly trimmed or merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape'





3. Based on a plain reading of the above entry, it is clear that "quartz" and "quartzite" are two separate entries, separated by a "semicolon" but clubbed together as a single entry. The Merriam Webster Dictionary defines "semicolon" and its role in sentence construction in the following manner:

"a punctuation mark; that can be used to separate parts of a sentence which need clearer separation than would be shown by a comma, to separate mainclauses which have no conjunction between, and to separate phrases and clauses containing commas"

Further, the Oxford English Dictionary defines "semicolon" and its role in sentence construction in the following manner:

"indicating a discontinuity of grammatical construction greater than that indicated by a comma but less than that indicated by a full stop".

In view thereof, it is clear that "quartz" and "quartzite" should be read as two separate entries and not as a single entry.

4. In any case, it must be noted that scientifically, "quartz" and "quartzite" cannot be used interchangeably. "Quartz" is a mineral comprising silicon and oxygen atoms and having the chemical composition  $\text{SiO}_2$  and is the second most abundant mineral found in the Continental crust of the earth. On the other hand, "Quartzite" is a hard, non-foliated metamorphic rock that was originally "Quartz Sandstone" and underwent metamorphic processes like tectonic compression to form quartzite. From a combined reading of the two, it is evident that quartz and quartzite cannot be used interchangeably and as such the factors relating to quartzite, as mentioned under heading 2506, cannot be applied to products sought to be classified as quartz.
5. In view thereof, it is clear that the Learned AARM has sought to exclude the classification of the said goods as "quartz" based on an incorrect reading of what Heading 2506 actually covers and how the same is to be read. Accordingly, on this ground alone, the appellant prays that the Impugned Advance Ruling be set aside.





B. The said goods fall squarely within the provisions of Heading 2506

6. The Learned AARM, in the Impugned Advance Ruling, has held that the said goods cannot be classified under Heading 2506 for the following reasons:
  - a. First, in Page 7 of the Impugned Advance Ruling, it has observed that these goods are not quartz in its crude state - it has been obtained by the process of mixing quartz with other substances. As such, quartz is merely a raw material used in the making of the said goods and as such, these goods cannot be considered to be equivalent with quartz.
  - b. Secondly, in Pages 7 and 8 of the Impugned Advance Ruling, it has been observed the words "other mechanical or physical processes" in the Explanatory Note to Chapter 25 cannot be taken to cover the manufacture of the impugned product as it takes colour from the words "crude state, without changing the structure of the product, crushed, powdered etc." preceding it and does not cover products that have been roasted, calcined or obtained by mixing.
7. At the outset, with respect to the first reason given in the Impugned Advance Ruling, it is important to note that the composition of goods is 93% crushed quartz that is combined with high-quality polyester resins and pigments and is then compacted under intense vibration, vacuum and pressure into dense and non-porous slabs. This is clear from Section 6 of the Technical Data Manual provided by the Appellant's vendor. Similarly, a Guide Specification for these goods, released by the Appellant's vendor, uses the words "Caesarstone" and "quartz" synonymously such that "Caesarstone" and "quartz" are considered to be interchangeable.
8. Reference must be made to Rule 2(a) of the General Rules for Interpretation. A bare perusal of the said Rule provides that a reference to a material or substance shall be taken to include a reference to mixture or combination of that material or substance with other materials or substances.
9. Further, Rule 3(b) of the General Rules for Interpretation provides that mixtures or composite goods that consist of different materials or are made up of different components





shall be classified as such material or component that gives the product its essential character. Applying the said rule to the present set of circumstances, it can be deduced that even in case the goods are said to be a mixture of more than one material/compound, since in the present case, quartz is the main component, the said goods can be said to be quartz by application of the said rule. If the same is called as quartz, classification needs to be undertaken on the basis of the same i.e. quartz in the said case.

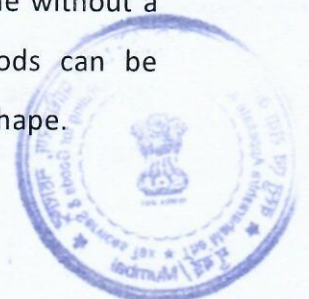
10. In order to further buttress this submission, recourse may be taken to the judgment of the Hon'ble Supreme Court in *Khandelwal Metal and Engineering Works and Anr Vs Union of India and Ors.* (AIR 1985 SC 1211) wherein the manner and applicability of the General Rules of Interpretation was discussed. First and foremost, the Apex Court had held that—  
“.....we can not decide the question of classification of goods under the “Import Tariff” by implications, when there are Rules of Interpretation which are specially framed to aid and assist the classification of goods under appropriate Headings. Those Rules must have precedence over other aids of interpretation.”
11. The clear implication that follows this statement of the Apex Court is that in cases where there exists uncertainty over classification of products based on the wordings of headings in the Customs Tariff Act, the Rules of Interpretation must be resorted to before any other extraneous sources for interpretation. Moreover, while dealing with the question if classification of brass, which is a mixture of copper and zinc such that the component of copper maybe anywhere between 67% to 70%, the Apex Court held that Copper clearly imparted Brass its essential character and as such Brass could be classified as Copper.
12. Moreover, the Learned AARM has found that the mixing of quartz with other substances changes the structure of the product. However, as can be seen by the description provided in the website of the Appellant's vendor, the mixing of small amounts of polymers and pigments to ground quartz of the highest quality is only for binding and addition of colour and in no manner tantamount to a change in the essential nature of the product. A combined reading of this description and the abovementioned order of the Apex Court, it is clear beyond doubt that the said goods that consists of approximately 93 percent crushed





quartz can in fact be understood to be quartz, within the meaning of the first part of Heading 2506.

13. In any case, it must be noted that Heading 2506 also covers quartzite which even in its natural form is a mixture of quartz with both other minerals like  $\text{Fe}_2\text{O}_3$  or other impurities. Thus, it cannot be said that Heading 2506 does not envisage a mixture of quartz in any form. In view thereof, the observation of the Learned AARM that Heading 2506 does not contemplate mixtures of any sort is incorrect and without proper understanding of the facts.
14. Additionally, it must be noted that even though Explanatory Note 1 to Chapter 25 does state that the products that have undergone processes other than those provided by the relevant Heading are excluded from the ambit of Heading 2506, it is important to note that the only exclusion provided in the first part of Heading 2506 is "natural sand". Sand is a naturally occurring material composed of finely divided rock and mineral particles. Sand is characterized by the size which is finer than gravel and coarser than silt. However, the said goods is the processed form of quartz in the form of slabs and thus, the same would not be construed as a natural sand. Thus, it is clear that the goods in question does not fall within the ambit of the only exclusion provided under Heading 2506.
15. Although the GST regime does not seek to classify goods in excess of 4-digit classification, for a better co-relation of classification under the Customs Tariff Act, we are hereby evaluating the 8-digit classification provided under the Customs Tariff Act. In this connection, it is pertinent to note that Quartz under the first part of heading 2506 can either be in powder form or in the form of lumps.
16. The term lump has not been defined under the Customs Tariff Act. Therefore, recourse needs to be made to the dictionary definition of the term lump. This has been defined in The Concise Oxford Dictionary [Pg. 846] as "A compact mass, especially the one without a definite or regular shape". Applying the aforesaid definition, the said goods can be construed to be in the form of lumps as a lump may or may not have a definite shape.





17. Further, in the context of the second reason given by the Learned AARM in the Impugned Advance Ruling, we refer to the Chapter Notes provided under Chapter 25 of the Customs Tariff Act. Chapter Note 1 to Chapter 25 provides the various processes that are permitted to be conducted on a product to qualify for classification under this Chapter. The relevant extract of the said Chapter Note 1 is reproduced hereunder:

"1. Except where their context or Note 4 to this Chapter otherwise requires, the headings of this Chapter cover only products which are in the crude state or have been washed (even with chemical substances eliminating the impurities without changing the structure of the product), crushed, ground, powdered, levigated, sifted, screened, concentrated by floatation, magnetic separation or other mechanical or physical processes(except crystallization), but not products that have been roasted, calcined, obtained by mixing or subjected to processing beyond that mentioned in that heading.'

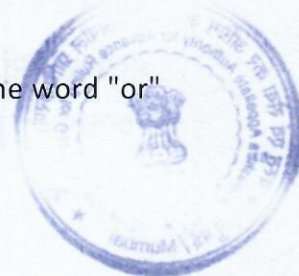
(emphasis added)

18. In order to understand the entire import of Chapter Note 1 to Chapter 25, it is important to understand the manner in which the word "or" has been used. In the commonly accepted principles of statutory interpretation as noted by Justice G P Singh in his book, Principles of Statutory Interpretation [Pg. 530-531, 14<sup>th</sup>Edn], the word "or" is understood to be a disjunctive word.

The Merriam Webster Dictionary defines "disjunctive" as "expressing a choice between two mutually exclusive possibilities". The Oxford English Dictionary [Pg. 706] defines the word "disjunctive" as "expressing an alternative, or implying an adverse relation with the clauses it connects". It is additionally defined as "having the property of disjoining; characterized by separation".

In page 523 of the same book, the Learned Author mentions that in general, a distinction might be made between positive and negative conditions prescribed by statute for acquiring a right or a benefit — positive conditions separated by 'or' are usually read in the alternative.

In the case of Indian Medical Association v Union of India [AIR 2011 SC 2365], the word "or" has been said to denote "an alternative in a series of exclusive arrangements".





19. From a plain reading of the above interpretations, it is clear that the use of the word "or" in a sentence denotes that the words coming before "or" and after "or" are mutually exclusive of each other. The Explanatory Note to Chapter 25 provides the "positive conditions" on the fulfillment of which goods may be classified thereunder. Applying the above-mentioned principles of interpretation, it is clear that the words preceding "or" and succeeding it should be read in the alternative. In view thereof, the phrase "or other mechanical or physical processes" are to be read separately from the first part of the explanatory note that states that only quartz in its crude state is covered under heading 2506 of Chapter 25 of the Customs Tariff. In other words, products that have undergone inter-alia the mechanical or physical processes are permitted to be classified under Chapter 25 of the Customs Tariff.
20. Thus, while a product may not be supplied in crude form, if the same is subjected to the processes mentioned under Chapter Note 1 to Chapter 25, such product would also be construed to form part of Chapter 25 of the Customs Tariff Act Schedule. For this, it needs to be evaluated whether the processes carried on by the Appellant's vendor falls within the purview of the term "mechanical process" as specified in Chapter Note 1 to Chapter 25.
21. The term "mechanical process" has been defined in the Advanced Law Lexicon (5<sup>th</sup> Edition) as "A process involving the use of machine". While this definition explains the meaning of the term "mechanical process", we can also refer to the individual meanings of the terms "mechanical" and "process" to understand the meaning in greater depth. For reference, the definitions of the terms "mechanical" and "process" are reproduced hereunder:

**a. Mechanical: -**

- i. Working or produced by machines [The Concise Oxford Dictionary—Tenth Edition, Page 884];
- ii. Pertaining to the science of mechanics or mechanism; depending upon mechanism or machinery [Advanced Law Lexicon (5<sup>th</sup> Edition)];

**b. Process: -**

- i. A series of actions or steps towards achieving a particular end; perform a series of operations to change or preserve [The Concise Oxford Dictionary — Tenth Edition, Page 1139]





ii. A method, operation, or series of actions intended to achieve some end or result; The natural meaning of the word "process" is a mode of treatment of certain materials in order to produce a good result, a species of activity performed on the subject matter in order to transform or reduce it to a certain-stage; "Process" connotes a substantial measure of uniformity of treatment or system of treatment. According to the Oxford English Dictionary, it means 'a continuous and regular actions, taking place or carried on in definite manner' [Advanced Law Lexicon (5<sup>th</sup> Edition)].

22. In view of the above, the term mechanical process can be understood to mean a series of operations with the use of machines. We shall co-relate this with the manufacturing processes carried on by the Appellant's vendor. The entire process of manufacturing Caesarstone is set out hereunder:

- a. Inspection of raw materials: The manufacturing process begins with a rigorous inspection of all incoming materials so as to ensure only high quality raw materials are used in the manufacture of Caesarstone.
- b. Feeding and mixing: The best quality raw materials are blended at a ratio of up to 93% natural quartz aggregates with pigments and polymer resins.
- c. Moulding: The blended mixture is then poured into a mold and formed into slab sizes of 3050x1440mm.
- d. Pressing: Subsequently, the slab is compacted by a special vacuum and vibration process at a pressure of 100 tons.
- e. Curing: The slabs are moved to the curing kiln and heated to 90QC for 45 minutes which gives Caesarstone its ultimate strength and solidity.
- f. Polishing: Slabs are then gauged, calibrated and polished to a perfect finish in a wide range of colors and designs in one of our three textural surface finishes: Polished, Honed or Viento.

The processes explained above have also been elaborated by the Appellant's vendor in its website.





23. On a combined reading of the definition of the term mechanical process with the manufacturing process carried on by the Appellant's vendor, it can be construed that entire manufacturing process is within the scope of the term mechanical process. Consequently, in terms of Chapter Note 1 to Chapter 25, the manufacturing operations conducted by the Appellant's vendor are within the ambit of permissible processes.
24. Besides this, the Appellant further submits that the HSN system of coding goods is based on the HSN developed by the World Customs Organization ("WCO"). The WCO, periodically releases an Explanatory Note to each of the Chapters / Products of the HSN.

C. The Impugned Product cannot be classified under Heading 6810

25. The Learned AARM has observed that since the entire Customs Tariff Heading 6810 has been reproduced for the GST entry, all items classifiable under Heading 6810 of the Customs Tariff Act will fall under the Heading 6810 under the GST Act. It must however be noted that this observation of the Learned AARM has no actual bearing on the facts of this case. As has already been stated, in the pre-GST regime, the Company, being an Importer dealer was not required to pay Excise duty on its sale to customers. It was merely liable to pay VAT / CST on such sale as per the rate schedule provided in the respective States VAT Act. Further, the rate Schedule under the respective VAT / CST laws was not linked to the HSN classification of the commodity. Under the Maharashtra Value Added Tax Act 2005 ("MVAT Act"), the said goods were taxed at 13.50% VAT in terms of the residuary entry contained in Schedule E to the MVAT Act. Since, there was no link between the applicable rate of VAT/CST with HSN classification, the Appellant had no reason to determine the same. Subsequently, GST was introduced w.e.f. 1 July, 2017, the GST rates were aligned to the HSN classification of the goods. Since, under the GST regime, the Appellant will be liable to pay CGST, SGST and/or IGST, as required, and accordingly pass credit from the same to its customers, it has become imperative for the Appellant to ensure that the impugned product is classified correctly. Accordingly, since there was no actual classification of the said goods under the Customs





Tariff Act at the behest of the Appellant, the question of automatic classification under Heading 6810 under the GST Act does not arise.

26. In the Impugned Advance Ruling, the Learned AARM has made use of a ruling dated 27 August 2002 under the Harmonized Tariff Schedule of the United States to hold that agglomerated quartz sheets are classified under subheading 6810.99.00, which provides for articles of artificial stone ("US Ruling"). As such, as per the Impugned Advance Ruling, basis the US Ruling, the said goods are liable to be classified under Chapter 68 and Heading 6810.
27. At the outset, we submit, based on previously iterated facts that the said goods cannot be classified under Chapter 68 and Heading 6810 of the Customs Tariff Act.  
Tariff entry 6810 inter alia covers various products like tiles, flagstones, bricks, prefabricated structural components for building or civil engineering and concrete boulder. While it is beyond doubt that Caesarstone is different from tiles, bricks and prefabricated components for building or civil engineering, it would also be important to understand the meaning of the terms "flagstones" and "concrete boulder",
  - a As per Rule 22 of the Madhya Pradesh Mineral Rules 1996, Flagstone is a natural sedimentary rock which is used for flooring, roof top, etc. and used in the cutting and polishing industry. The meaning of the term flagstone clarifies that the same is different from Caesarstone.
  - b We would also refer to the meaning of the term "concrete boulder". The word concrete boulder has not been defined anywhere and thus, we would refer to the dictionary definitions. As per The Concise Oxford Dictionary, the word concrete refers to the building material made from a mixture of gravel, sand, cement and water. Further, the word boulder refers to a large rock. Thus, on a combined reading of both the aforementioned definitions, it can be construed that a concrete boulder would mean a large rock made from a mixture of gravel, sand, cement and water.

In view of the above, the product can merit classification only under the residuary category of tariff entry 68109990.





28. Further, it would be worthwhile to refer to Chapter Note 1 to Chapter 68 which clearly provides that Chapter does not cover goods falling under Chapter 25. The relevant extract of the same is as follows:

'1. This Chapter does not cover:

(a) Goods of Chapter 25;..."

29. Thus, if the said goods qualify to be classified under Chapter heading 2506, it automatically gets excluded from the applicability of tariff entry 6810. Consequently, the entire issue that merits consideration in the instant case is whether Caesarstone can be classified under Chapter heading 2506 of the Customs Tariff.

30. Further, we would also refer to Rule 3(a) of the General Rules for Interpretation which provides the manner of determination of classification when the goods are classifiable under two or more headings. The analysis pertaining to the same is as follows:

- a At the outset, it is submitted that due to a specific exclusion of goods falling under Chapter 25 in Chapter Note 1 to Chapter 68, it appears that there does not exist a possibility of a scenario where a particular product can be classified under Chapter 25 as well as Chapter 68 of the Customs Tariff Act.
- b Without prejudice to the aforesaid argument, if one intends to apply Rule 3(a) of the General Rules for Interpretation, the said rule provides that a specific description should be prevailed over a generic description. In the instant case, the two headings that merit consideration is Quartz — In lumps (2506) and Other Artificial Stones (6810). In the instant case, the most specific description that relates to the nature of the said goods is under tariff entry 2506.
- c The Hon'ble Apex Court, in plethora of judgments held that the heading that provides a more specific description shall be preferred to the headings providing a more general description.





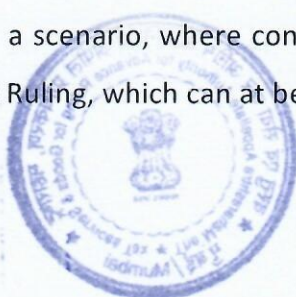
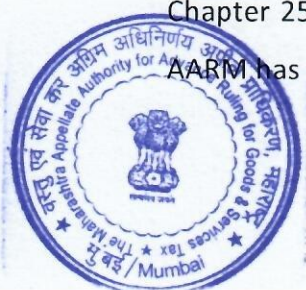
i. In *Indian Metals & Ferro Alloys Ltd., Cuttack vs. Collector of Central Excise, Bhubaneswar*, [1991 Supp (1) SCC 125], the Hon'ble Apex Court held that a residuary item can be referred to and such item can be applied only when goods are shown to be not falling under any other specific item. If they are covered by a specific item, residuary item has no application. It was further held that unless the department can establish that the goods in question can, by no conceivable process of reasoning, be brought under any of the specific items mentioned in the tariff, resort cannot be had to the residuary item.

ii. Similarly, the Hon'ble Apex Court in the case of *Speedway Rubber Company vs. CCE, Chandigarh* [2002 (143) ELT 0008 (SC)] has laid down the principle that while determining the classification of a product, the specific entry provided under the Tariff should prevail and overrule a general entry.

31. It must be noted that as per a ruling dated 1 December 1994 by the Area Director of the New York Seaport ("New York Ruling"), an item that consisted largely of silicon dioxide was considered to be natural quartz and classified under heading 25061000 of the Harmonized Tariff Schedule of the United States. As has already been submitted, the Technical Data Manual provided by the Appellant's vendor specifies that "Caesarstone is 93 percent crushed quartz (silicon dioxide  $-SiO_2$ )...".

32. At this juncture, it must be noted that Heading 6810.99.00 under United States Customs law is a residuary entry whereby all articles that cannot be classified under other Headings under Chapter 68 are classified under Heading 6810.99.00. In view of our above submissions, it is clear that when a product is classifiable under two Headings, one of which is specific and one generic, the latter will give way to the former.

33. The Learned AARM has relied on the US Ruling that has classified agglomerated quartz sheets under subheading 6810.99.00 which is the residuary clause. However, upon a reading of the aforementioned New York Ruling, it is clear that even within the United States, there exists legitimate confusion as to the manner in which products can be classified under Chapter 25 and Chapter 68. In such a scenario, where conflicting rulings exist, the Learned AARM has erred in relying on the US Ruling, which can at best have persuasive value.



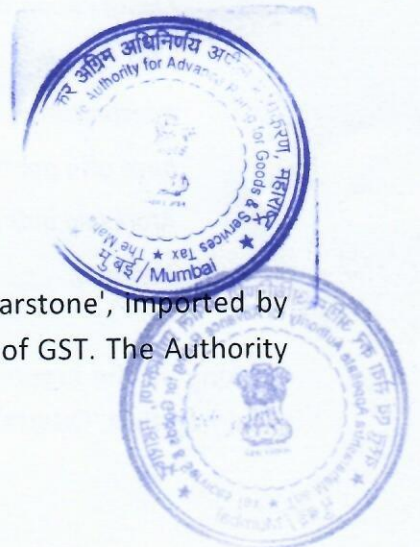


### Personal Hearing

34. A hearing was fixed in the matter on 19.07.2018 which was attended by Advocate Ms.RashmiDeshpande and Advocate Mr. Ankit A Shah on behalf of the Appellant and Sh. GhanishtYasu, Assistant Commissioner, GST Div. II, Navi Mumbai Commissionerate as jurisdictional officer.
35. The Advocates reiterated their written submission and emphasized that the major constituent of Caesarstone is Quartz (93%) which is a natural substance and should be classified under HSN 2506(25061010 as Lumps) in terms of Rules of interpretation of Customs Tariff as the same is mixture of Quartz with other minor substances, thus Quartz giving the product as essential character. They, however, admitted that said goods are being classified under 6810 under Customs Tariff at the time of import for the purpose of BCD and IGST. They also argued that the processes conducted during the manufacture of Caesarstone are very much covered under the mechanical or physical processes mentioned in Chapter Note 1 to Chapter 25. The Advocates argued that since the product is made of 93% quartz and quartz is mentioned against HSN 2506, the classification of the said goods should be decided under HSN 2506 as specific entry will prevail over generic entry. The Advocates also submitted that their product is made from 93% of natural stone(quartz), hence same can not be classified under HSN 6810 as Artificial Stone.
36. The Jurisdictional Officer opposed the argument of the Advocate citing that 250610 covers Quartz in Lumps and the goods in question are in no way in Lumps as the same are in form of slabs. He further argued that Chapter 25 pertains to Minerals and the goods in question are a manufactured product after undertaking number of processes and thus cannot be classified under 2506 as the said Heading covers natural goods in crude state with minor processes permitted in the Chapter.

### Discussions

37. The issue involved in the matter is classification of the product 'Caesarstone', imported by the Appellant, under HSN code 2506 or 6810 for the purpose of levy of GST. The Authority for Advance Ruling, after following due procedure, ruled that





*"Caesarstone imported by the applicant is to be classified under HSN code 6810."*

Aggrieved by the said Ruling, the Appellant is before us.

38. We have heard both the parties, gone through the written submissions made by the appellant as well as the grounds of appeal. We find that the Appellants are importing the goods in question and are clearing the same by paying Customs duty and IGST through self-assessment method under the Customs tariff heading 6810, and are availing credit of the IGST paid under GST. Thus, when there is no dispute about the classification of the goods in question when the appellants assess these goods on their own under HSN 6810 of the Customs Tariff, the HSN Code for the purpose CGST/SGST ought to be the same. On this ground alone, the appeal is liable for dismissal. Nevertheless, the questions raised by the appellant cannot be left unanswered, and are discussed as under.

**39. Advance ruling has been passed based on an incorrect reading of heading 2506.**

At the outset here we note that to avoid classification disputes under the GST regime, the Customs Tariff has been adopted for descriptive classification of goods under GST. Further, although the tariff entries for the purposes of GST have been kept at 4 digits, in case of any doubt, for exact classification reference will always be need to be made to 6 to 8 digit entries of the HSN, as also the Explanatory Notes provided therein, which have been held to be binding in nature by the courts. Reliance is placed on the following two judgments of Hon'ble Supreme Court in this regard:

**a) Collector of Customs, Bombay Vs. Business Forms Ltd. {2002(142) 18 E.L.T.(S.C.)}**

*"Classification of goods - Explanatory Notes to HSN not only of persuasive value but entitle to the greater consideration in classifying goods under Central Excise & Customs Tariff."*

**b) O.K. Play(India) Ltd. Vs. Commissioner of Central Excise, Delhi-III, Gurgaon. {2005(180) E.L.T. 300(S.C.)}**

*Classification of goods - Parameters - (1) HSN along with explanatory notes provide a safe guide for interpretation of an entry - (2) Equal importance to be given to Rules of Interpretation of Excise Tariff - (3) Functional utility, design, shape and predominant usage have also got to be taken into account while determining classification of an item - Aforesaid aids and assistance more important than names used in trade or common parlance.*

Taking up the arguments of the appellant on this issue, we observe that the Appellant has claimed that 'Quartz' and 'Quartzite' should be read as two entries and not as a single entry





as both are separated by a 'semicolon'. From a reading of the Tariff, we find that for the goods 'quartz', there are only two entries at tariff item level (8 digit level) under heading 2506, viz.

(i). 25061010----- In lumps

(ii). 25061020--- In powder

Even if 'Quartz' was to be imported, it would have been classified under 2506 in the above two forms only. However, the form in which the goods are imported, even if we presume for the sake of argument that these are quartz, are neither in form of 'LUMPS' nor in the form of 'POWDER', but are Agglomerated/Fabricated/Engineered stone in slab form, which is evident from the literature provided by the Appellant themselves. Therefore, the argument of Appellant that AAR has passed the order on an incorrect reading of Heading under 2506, holds no ground.

#### 40. The said goods fall squarely within the provisions of Heading 2506.

The Appellant has claimed that the composition of goods is 93% crushed quartz and it should be classified as quartz only. And yet, if composition is the only criterion for classification, then all manufactured goods would merit classification in the headings of their raw materials. For example- All furniture of wood will find classification under the heading of wood only as it contains more than 90% of wood and there would not have been any need for a separate heading for wooden furniture. Whereas, the Tariff progresses from Chapter 1 to 99 from materials in their primary form to finished goods, and the later entry is the more specific entry for purposes of classification. Therefore, for correct classification, one needs to understand the processes that the product has undergone from the primary state of the materials used to the finished state of the product being offered 'off the shelf', so to speak.

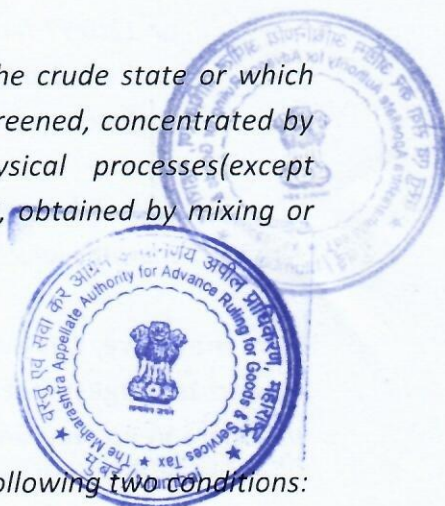
Let us now see the two competing entries in light of the above guiding principles. We note that Chapter Note 1 to Chapter 25 stipulates that,

*'the headings of this Chapter cover ONLY products which are in the crude state or which have been washed, crushed, ground, powdered, levitated, sifted, screened, concentrated by floatation, magnetic separation or other mechanical or physical processes(except crystallisation), but not products which have been routed, calcined, obtained by mixing or subjected to processing beyond that mentioned in each heading.'*

The Explanatory Notes to HSN 2506, state that,

*Quartz is naturally occurring crystal form of silica.*

*Any product falls in this heading **only** if it complies with both of the following two conditions:*





- (a) It must be in crude state or have not undergone any process beyond that allowed in Note 1 to this Chapter; for this purpose, heat treatment designed solely to facilitate crushing is regarded as a process permitted by Chapter Note 1.
- (b) It must not be of a variety and quality suitable for the manufacture of gem stones.....

To classify their product as quartz, the Appellant has referred to Rule 2(a) and Rule 3(b) claiming that the said goods are a mixture or combination of quartz. It appears that Appellant had intended to refer to Rule 2(b) in place of Rule 2(a) as Rule 2(a) refers to incomplete or unfinished article, which is not the case here as the goods in question are complete and finished product. As per Rule 2(b), the classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3. As per Rule 3(a), specific description shall be preferred over generic description and as per Rule 3(b), the classification shall be decided based on the material or component which gives the mixture or combination of goods as their essential character.

In the instant case, the goods in question are registered as 'Caesarstone,' and are manufactured by M/s Caesarston Ltd. As per the Technical Data Manual, submitted by the Appellant, Caesarstone is 'engineered quartz surface' which outperforms natural stone. The manufacturer does not use it as a synonym of quartz as claimed by the Appellant. It is being manufactured using various raw materials wherein upto 93% natural quartz aggregates are mixed with pigments and polymer resins. The manufacturer declares the ingredients on the goods as- "Quartz/Silica sand, Polyester Resin, Styrene, Titanium Dioxide, tert-Butyle peroxy-3,5,5-trimethylhexanoate, Pigment mixture". The manufacturing process is also available on the website of the manufacturer which inter-alia includes that 'Caesarstone Quartz Surfaces' are manufactured through a highly automated yet strictly monitored process. Two steps of the said manufacturing process are reproduced hereunder-

a. *Moulding and Pressing-*

*The mixture is then poured into a mould and formed into slab sizes of 306x144 cm or 120x57 inches. It is compressed under very high pressure(nearly 100 tons psi) and vibrated in a vacuum. This removes all the air and creates a compressed surface.*

b. *Curing-*

*The slabs are then moved to the curing kiln and heated to 90 degree C for 45 minutes which provides the finishes levels of strength and solidity.*

From the above, it is evident that Caesarstone is not a natural stone, as its registered name appears to suggest, but is an engineered product, manufactured after a series of processes which are in no way simple mechanical or physical processes covered by Chapter note 1 to





Chapter 25. Therefore, the claim of Appellant that Caesarstone, viz: that the product is a mixture of 93% Quartz, with some minor additions of other materials; and that the same undergoes only simple mechanical and physical processes; and thus should be classified by invoking Rule 2 (a) and 3(b) of interpretation rules, does not hold ground. If some lumps or powder of quartz would have been presented along with some polyester resins in form of a mixture, the classification would have been decided under heading 2506 only based on the Rule 2(b) read with Rule 3, as it would not have been possible to decide the classification in terms of Rule 1 in that situation. Here, the case is different. The goods in question are not a mixture or combination of goods, because 'Caesarstone' is an altogether new product, which comes into existence after undergoing various processes and is known in trade parlance by its new name, nature and use and not known by a mixture of quartz combined with other materials. Therefore the quartz contained in the goods in question i.e. Caesarstone, is not in crude state and has undergone processes beyond those allowed in Note 1 of Chapter 25, and hence fail to comply with the conditions required for classification under 2506. The reference to other Rules is unwarranted when classification can be decided under Rule 1.

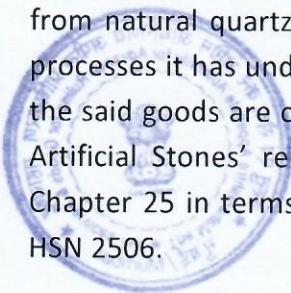
We therefore observe from all the evidences before us that the processes being undertaken by the manufacturer for this product are much beyond the processes mentioned in Chapter Note 1 to Chapter 25, and thus the said goods cannot be classified under this Chapter. All other arguments relating to the semantics of semi colon etc. are disposed of accordingly.

Now, we turn our attention to the competing entry HSN 6810, which covers Articles of Artificial Stones. As per the Explanatory Notes to HSN 6810,

***'Artificial Stone is an imitation of natural stone obtained by agglomerating pieces of natural stone or crushes or powdered natural stone(limestone, marble, granite, porphyry, serpentine etc.) with lime or cement or other binders(e.g. plastics). Articles of artificial stone include those of "terrazzo", "granito", etc.'***

The Explanatory Notes also state that- ***"when lumps of quartz of various sizes are introduced into the mixture, artificial type products are obtained."***

The Explanatory Notes above leave us in no doubt that, even though Caesarstone is made from natural quartz, it is clearly classifiable as an article of artificial stone, in view of the processes it has undergone and the form in which it has been presented. Thus, we find that the said goods are classifiable under 6810 based on the terms of the heading as 'Articles of Artificial Stones' read with the Explanatory Notes to HSN 6810 and are excluded from Chapter 25 in terms of the Chapter Note 1 of Chapter 25, read with explanatory notes to HSN 2506.





41. The Apex Court Judgement in the matter of M/s Khandelwal Metal and Engineering Works, cited by the Appellant, pertains to application of Rules of Interpretation in cases where there exists uncertainty over classification of products. Firstly, there is no uncertainty over classification here. Secondly, the classification has been decided relying on the Rules of interpretation only. (Rule 1). Therefore, the said judgment is of no help to the Appellant.

Two other judgments of Apex Court, cited by the Appellant, are also not relevant in this matter as both pertain to classification of products based on specific entry over general entry. When the goods in question are excluded from Chapter 25 based on the Chapter Notes, there is no question of considering the same under that Chapter as specific entry. Moreso, the said goods are specifically classified as Articles of Artificial Stone under HSN 6810.

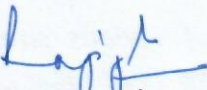
The Rulings of other countries, referred by the Appellant and Authority for Advance Ruling, are for the purpose of reference only and have no binding effect in this case, thus not being discussed here.

42. In view of the above discussions, we hold that Caesarstone imported by the Appellant merits classification under HSN 6810 in view of the Rule 1 of the Rules for interpretation of the Customs Tariff, applicable to classifications under GST, read with chapter Note 1 of the Chapter 25 and terms of the heading 6810.

Accordingly, we pass the following order---

#### ORDER

We do not see any reason to interfere with the Ruling given by AAAR, Maharashtra holding that Caesarstone imported by the Applicant is to be classified under HSN code 6810.

  
(RAJIV JALOTA)  
MEMBER

  
(SUNGITA SHARMA)  
MEMBER

- Copy to- 1. The Appellant  
2. The AAR, Maharashtra  
3. The Pr. Chief Commissioner, CGST and C.Ex., Mumbai  
4. The Commissioner of State Tax, Maharashtra  
5. The Commissioner CGST, Navi Mumbai.  
6. The Jurisdictional Officer  
7. The Web Manager, [WWW.GSTCOUNCIL.GOV.IN](http://WWW.GSTCOUNCIL.GOV.IN)  
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