

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

REGIONAL BENCH

CUSTOMS APPEAL NO. 85365 OF 2017

(Arising out of Order-in-Original No. CCP/ADJ/AKJ/06&07/2016 dated 30.11.2016 passed by the Principal Commissioner of Customs (Preventive), Mumbai)

M/s Amba River Coke Ltd.

2nd Floor, Innovation Centre
Geethapuram, Dolvi, Taluka Pen,
District Raigad-402 107

...Appellant

VERSUS

**Principal Commissioner of
Customs (Preventive),**

Marine & Preventive Wing
2nd Floor, New Customs House,
Ballard Estate,
Mumbai 400 001

...Respondent

APPEARANCE:

Shri Vipin Jain, Shri Vishal Agarwal and Shri Abhishek Kapadia, Advocates for the Appellant

Shri S.K. Mathur, Special Counsel for the Department

CORAM:

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. C.J. MATHEW, MEMBER (TECHNICAL)**

Date of Hearing: 27.04.2022

Date of Decision: 03.06.2022

FINAL ORDER NO. A/85506/2022

JUSTICE DILIP GUPTA:

M/s. Amba River Coke Ltd.¹ has filed this appeal to assail the order dated 30.11.2016 passed by the Principal Commissioner, Customs (Preventive) Mumbai², adjudicating the two show cause notices, both dated 20.05.2016, issued to the appellant and M/s. JSW

-
1. the appellant
 2. the Principal Commissioner

Steel Limited. The present appeal concerns the notice issued to the appellant only. The order holds that 9,43,614 MT of Iron Ore concentrate valued at Rs. 5,26,12,34,168/- imported under 18 Bills of Entry are classifiable under Customs Tariff Item³ 2601 11 50 of the Schedule to the Customs Tariff Act, 1975⁴ and so the appellant would not be entitled to avail the benefit of exemption from payment of Countervailing Duty⁵ on the product under section 3(1) of the Tariff Act in terms of serial no. 56 of the Table contained in the notification no. 12/2010-CE dated 17.03.2012⁶. The Principal Commissioner has, accordingly, determined the demand of differential CVD of Rs. 69,32,07,587/- and since the said amount was deposited by the appellant, it was appropriated. The Principal Commissioner has also directed for payment of interest and has also imposed fine and penalty.

2. The appellant is engaged in the manufacture of iron ore pellets. One of the raw materials required for the same is iron ore fines.

3. The dispute in the instant appeal relates to 18 consignments of iron ore fines imported by the appellant from Vale International SA, Switzerland, which had described the goods as Iron ore Carajas Sohar (iron ore fines). The specifications contracted, as set out in one of the purchase order dated 24.09.2014, are as follows:

	Fe	SiO ₂	Al ₂ O ₃	P	Mn	Moisture	+6.3mm	+1mm	-0.15mm
Product	64.00	3.40	1.90	0.060	0.750	8.5	18.0	50.0	25.0

-
3. CTI
 4. the Tariff Act
 5. CVD
 6. the notification dated 17.03.2012

4. Along with the commercial invoice and the packing list, the supplier also provided a Certificate of Analysis to the appellant. A specimen Certificate of Analysis dated 26.12.2014, which sets out the chemical composition and the physical specification of Iron ore Carajas Sohar, is as under:

I) Chemical Composition (on Dry Basis)

Fe	SiO ₂	Al ₂ O ₃	P	MN	LOI
64.77 PCT	2.30 PCT	1.27 PCT	0.025 PCT	0.45 PCT	2.37 PCT

II) Physical Specification (on Wet Basis):

12.5 MM	5MM	0.5 MM	6.3 MM
4.8 PCT	17.5 PCT	59.1 PCT	13.6 PCT

5. The appellant classified the iron ore fines under CTI 2601 11 31 and claimed exemption from payment of CVD in terms of the notification dated 17.03.2012, which grants complete exemption from payment of excise duty to "ores".

6. The relevant entry in the said exemption notification is as under:

In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944) and in supersession of *****, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the excisable goods of the description specified in column (3) of the Table below read with relevant List appended hereto and falling within the Chapter, heading or sub-heading or tariff item of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) (hereinafter referred to as the Excise Tariff Act), as are given in the corresponding entry in column (2) of the said Table, from so much of the duty of excise specified thereon under the First Schedule to the Excise Tariff Act, as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table and subject to the relevant conditions annexed to this

notification, if any, specified in the corresponding entry in column (5) of the Table aforesaid:

Sl. No.	Chapter or heading or sub-heading or tariff item of the First Schedule	Description of excisable goods	Rate	Condition No.
(1)	(2)	(3)	(4)	(5)
1 to 55 ***	*****	*****	*****	*****
56	2601 to 2617	Ores	Nil	-

7. All the 18 Bills of Entry were provisionally assessed during the period October 2014 to January 2015. In the course of assessment, samples were drawn by the Customs Authorities and sent for testing. Testing was undertaken to carry out a complete analysis of Fe, SiO₂, Al₂O₃, P, Mn, LOI, moisture percentage. The Test Report reads as follows:

"The Sample is in the form of moist brown colour powder and small friable lumps of irregular shape and size. It is mainly composed of Iron Oxide with small amount of silica, Aluminum and Manganese.

Moisture = 4.5%

Iron Content (as such) = 61.6%, Fe₂O₃ = 88.0%

Loss on Ignition = 6.0%

SiO₂ = 2.0%

Al₂O₃ = 2.1%

Manganese = 0.18%

It is other than agglomerated Iron Ore and Iron Ore fines.

Remnant may be collected within 7 days."

8. In the course of the finalization of assessments, the Superintendent of Customs (Preventive), by a letter dated 28.10.2014, called upon the appellant to explain as to whether the goods imported were iron ore fines or the same were iron ore pellets, as from the website of Vale International, SA, Oman it appeared that they were

manufacturers of iron ore pellets. The appellant, by letter dated 04.12.2014, pointed out that the consignment of iron ore fines had been imported from Oman Plant of Vale International. The said iron ore fines were nomenclated by Vale International as Iron ore Carajas Sohar and the same were formed by blending two products imported from Vale International Brazil namely, Iron ore Carajas and Iron Ore concentrate. Along with the said reply, a clarification dated 10.11.2014 received from the supplier was also attached. The Department sent a letter dated 31.12.2014 asking the appellant to furnish the details of the blending operations carried out by the supplier of Iron ore Carajas Sohar at Oman. A letter dated 13.1.2015 was sent by the appellant explaining that at Oman, Vale International was receiving Iron Ore Carajas and Iron Ore concentrate from Brazil and was blending them using the yard and equipment available at the port. The blend had a proportion of 90-95% of Iron Ore Carajas and 5-10% of Iron Ore concentrate. The appellant addressed another letter dated 27.3.2015, wherein it explained that the Iron ore Carajas Sohar is formed through a blend/mixing operations of two products imported from Vale Brazil namely, Iron Ore Carajas and Iron Ore concentrate. The Iron Ore concentrate was produced by Vale from its Southeastern System in Brazil and that the same had iron content of around 66.65% and that 84% of the consignment had a particle size of (- 0.015mm). As against this, the iron content in Iron ore Carajas Sohar was around 64.34% and about 18% of the consignment had particle size of (+6.3mm), while 50% of the consignment had a particle size of (+1mm) and that only 25% of the consignment had a particle size of (-0.15mm).

9. The provisional assessments were finalized by the Deputy Commissioner of Customs (Preventive) by order dated 25.05.2015 holding that the goods were correctly classified by the appellant under CTI 2601 11 31 and were consequently entitled to the benefit of exemption under the notification dated 17.03.2012.

10. However, an enquiry was later initiated by the officers of the Marine & Preventive Wing of the Commissionerate in regard to the imports of iron ore fines. In the course of investigation, statements of the personnel of the appellant and the Custom House clearing agent were recorded. The investigating authority also sought opinions from Professor Walmik Rathod, Department of Mechanical Engineering at VJTI, Mumbai and Shri D.K. Swamy, Administrative Officer the Indian Bureau of Mines, Ministry of Mines.

11. Thereafter, a show cause notice dated 20.05.2016 was issued stating that the appellant was not entitled for exemption under entry no. 56 of the notification dated 17.03.2012 for the reasons:

- (i) The ores and concentrates are two distinct excisable goods by virtue of Chapter Note 4 to Chapter 26 of the Tariff Act. This Chapter Note stipulates that the process of converting ores into concentrates shall amount to manufacture;
- (ii) The global website of Vale records a stage-wise process undertaken on Iron Ore at Carajas, Para, Brazil. It was evident from the website that the mined ore atleast underwent two preparation processes namely, crushing and screening to make them suitable as sinter and pellet feed. The website shows that the screening process at Carajas, Para, Brazil employs as many as 17 production lines. Crushing and Screening are two of the

inclusive special processes, listed in the HSN Explanatory Notes for production of Iron Ore concentrate;

- (iii) The ore after being crushed and screened is shipped by Vale International SA, Switzerland from Brazil to their other facility at Oman, where blending is undertaken to produce Iron Ore Carajas Sohar;
- (iv) The said Iron Ore Carajas Sohar is an outcome of the process of blending or grading after having already undergone crushing and 17 cycle screening process at Carajas, Para, Brazil; and
- (v) It is evident from the webpage of Vale that washing of ore is undertaken at Carajas, Para, Brazil mines, so as to remove the impurities of mu, slag, gangue and other impurities.

12. The appellant filed a reply dated 16.09.2016 to the show cause notice and submitted that the CBIC had by Circular dated 17.2.2012, after consulting the concerned line ministry i.e. the Ministry of Mines, clarified that the process of converting ore into concentrates involved removal of whole or part of the foreign matter. The process of crushing and screening did not result in removal of whole or part of the foreign matter and that it is only when the processes such as milling, hydraulic separation, magnetic separation, floatation and concentrate thickening were undertaken that it could be said that the ores were converted into concentrate. It was submitted that admittedly the ore at Carajas, Para, Brazil only underwent the process of crushing and screening, which as clarified by the CBIC, did not result in the concentration of the ore. Also the process of blending 90-95% of iron ore with 5-10% of iron ore concentrate also did not result in removal of part or whole of the foreign matter so as to qualify

as a concentrate. The appellant also sought cross examination of Dr. Walmik Rathod of VJTI and Shri D.K. Swamy, Administrative Officer at Indian Bureau of Mines. The appellant also placed reliance on the opinion of Shri R.C. Prasad, Ex-Professor IIT, Bombay as also on the opinion of Dr. S.J. Gopalkrishna, Chairman–Department of PG Studies & Research in Mineral processing, Vijayanagra Sri Krishnadevaraya University.

13. The allegations leveled in the show cause notice were upheld, placing reliance on an extract from the website of Vale from which an inference was drawn that beneficiation process to remove impurities by use of water was being undertaken by Vale at Carajas, Para, Brazil and the goods were classified under CTI 2601 11 50. The relevant portion of the order is reproduced below:

“238. This is a case, where importations had been made by the two noticees, to directly feed their sinter and pallet plants, without undertaking any beneficiation processes. Such direct feeds had to have a high iron content, low presence of impurities, close particle size etcetera. To obtain such sinter and pallet feeds; the mined ore needed to be a processed or prepared iron ore. It is for this reason that the two noticees mainly imported iron ore carajas sohar, which had these characteristics. The Carajas mines may have produced iron ore with high iron concentration; but, geology and geographical and customer considerations necessitated processing and preparing of such mined ore. It was also a fact that these ores were mined from different mines in Carajas, not necessarily having similarly high iron content. It was for this reason that to meet the requirements of the needs of the two noticees, the processed and prepared iron ore carajas was further blended in the Vale facilities at Sohar in Oman with pallet fine feed tubarao, in the ratio of 90:10 to enable supply of iron ore carajas sohar to them. The blending process was carried on the iron ore carajas, after the mined ore at Carajas underwent the processes of crushing, grinding, milling, screening, scrubbing, froth floatation, concentration, thickening, drying, and

dewatering etcetera using their own technology and processes, including dry beneficiation processes Tale at its ore processing facilities of Vale.

239. The HSN explanations defined and explained these needs and requirements explaining the distinction between the ore and ore concentrates and the physico and physico chemical processes requisites therefor. Its plain litera explained that ore per se could not be used for further metallurgical operations because of gangue deficiencies. The removal of these deficiencies, resulting in, consequent, upon concentration of the iron content in the prepared or processed concentrate was the norm to enable the user to undertake such further metallurgical operations."

14. Shri Vipin Jain, learned counsel for the appellant assisted by Shri Vishal Agarwal and Shri Abhishek Kapadia, made the following submissions:

- (i) The Explanatory Notes to the HSN clarify that for the purpose of Heading 2601 to 2617 the term 'concentrate' applies to 'ores' which have had part or all of the foreign matter removed by special treatments, either because such foreign matter might hamper subsequent metallurgical operations or for economical transport. It is evident from the aforesaid Explanatory Notes to HSN that 'concentrate' is a reference to 'ore' which has had all or part of the foreign matter removed by special treatment. Conversely, if there is no special treatment undertaken on the 'ore' so as to remove part or whole of the foreign matter, it cannot be considered as a concentrate;
- (ii) This position has also been clarified by the CBIC in its Circular dated 23.03.2012. The Circular notes that doubts had been raised on the issue as to whether the term 'ore' would include concentrate and whether the insertion of Chapter Note 4 in Chapter 26 of the Tariff Act, would have any impact on the

admissibility of the exemption available to ore. The CBIC has, by relying upon the Explanatory Notes to the HSN, clarified in the Circular dated 23.03.2012 that the term concentrate applies to 'ores' which have had part or all of the foreign matter removed through special treatments and accordingly the exemption that applies to ore would no longer be available to concentrates, as by virtue of Chapter Note 4 to the Tariff Act, ores and concentrates are two distinct commodities;

- (iii) The Supreme Court in **National Minerals Development Corporation vs. State of MP**⁷, by referring to the dictionary/technical material, held that concentrate consists of enriched ore segregated from waste in a concentration plant;
- (iv) The CBIC has, after consulting the concerned Ministry of Mines, by Circular dated 17.02.2012, clarified that crushing and screening are mere preparatory processes and do not constitute the special treatment envisaged in the Explanatory Notes, by which part or all of the foreign matter is removed. In other words, it has been clarified that ores that have been merely subjected to the processes of crushing and screening cannot be said to have been concentrated, as the said processes do not result in removal of part or whole of the foreign matter;
- (v) Both, the show cause notices and the impugned order, have in passing, contended that processes, beyond crushing and screening, have been undertaken on the Iron Ore at Carajas, Para, Brazil. However, there is not even an iota of evidence to even suggest, let alone prove, that further or other processing had taken place at Carajas, Para, Brazil. The burden to prove

7. 2004 (6) SCC 281

that processes beyond crushing and screening had been carried out was on the Revenue, which it failed to establish; and

- (vi) The Principal Commissioner, has in paragraph 119 and 120 of the impugned order, held that Vale was using water for removal of impurities, which fact was evident from the pictorial representation hosted on their official website and was corroborated by the ANA-IBRAM's 2013 report. This incorrect finding has been arrived at by incorrect extrapolation of the pictorial representation in the impugned order. The show cause notice had not made any reference to the aforesaid pictorial extract from the website.

15. Shri S.K. Mathur, learned special counsel appearing for the Department, however, made the following submissions:

- (i) The appellant have mentioned that the Iron ore supplied from Oman is a blend of 90-95% Iron ore Fines of Carajas, Brazil with 5-10% of Iron Ore Concentrates. Thus, what is imported is not Iron Ore which is naturally extracted from the mines but Iron ore subjected to processes crushing, screening, blending etc., for removal of impurities such as Alumina and Silica to make it fit for direct use in the furnace. Iron Ore with 95% purity is none else than Iron Ore concentrate which was not declared by the appellant and the actual contents were suppressed with intention to avail exemption from payment of CVD under notification dated 17.03.2012;
- (ii) Excerpt from the official website of Vale clearly shows that Carajas is situated in the Amazonian tropical rain forest and the mined ore is heavy in water content;

- (iii) Irrespective of the processing done, it remains a fact that the test report of sample at VJTI mentioned 95% concentration of Fe_2O_3 which means it was an Ore (concentrate) directly capable for feeding into the furnace;
- (iv) Dr. Rathod is a qualified Engineer in Metallurgy and the test of the sample of Ore Carajas Sohar was carried out in the laboratory in his presence. The percentage of contents revealed that the ore is concentrate. This leaves no ambiguity;
- (v) The report given by Indian Bureau of Mines is an authoritative report; and
- (vi) Irrespective of the processes carried out at Carajas Sohar and at Oman, the Iron ore sample test report revealed that it is high in concentration and therefore not the one declared by the appellant in the Bill of Entries.

16. The submissions advanced by the learned counsel for appellant and the learned special counsel appearing for the Department have been considered.

17. The first issue that arises for determination in this appeal is whether the process of crushing and screening undertaken on the Iron Ore after it was mined at Carajas, Para, Brazil and its subsequent blending at Oman with 5-10% iron ore concentrate, would result in the goods imported being classifiable under CTI 2601 11 50 as Iron Ore concentrate, as against CTI 2601 11 31 for Iron Ore fines, and consequently whether the benefit of the exemption from payment of CVD at Serial. No. 56 of notification was available to the imported goods in question.

18. The second issue that arises for consideration is whether the burden was on the appellant to establish its entitlement to exemption under the notification dated 17.3.2012 or the said burden had shifted on the Department, since the benefit of the exemption had been extended not only at the time of clearance of the imported goods but also at the time of finalisation of the provisional assessment.

19. It would be seen that the main controversy that has arisen for determination in this appeal is as to whether the product that has been imported by the appellant is Iron Ore (fines) or Iron Ore (concentrate). 'Concentrate' has neither been defined in the Notes to Chapter 26 of the Tariff Act nor in the notification dated 17.03.201. HSN also does not provide a separate classification for ore that is concentrated or otherwise. In fact, it is only in Chapter Note 4 to the Central Excise Tariff Act, 1985 that a distinction is sought to be drawn between ore and concentrate and it is as follows: "In relation to products of this chapter, the process of converting ore into concentrates shall amount to manufacture". The Explanatory Notes to HSN clarify that for the purpose of Heading 2601 to 2617, the term 'concentrate' applies to 'ores' which have had part or all of the foreign matter removed by special treatment, either because such foreign matter may hamper subsequent metallurgical operations or for economical transportation. It is, therefore, clear that 'concentrate' is a reference to 'ore' which has had all or part of the foreign matter removed by special treatment. In other words, if no special treatment has been undertaken on the 'ore' so as to remove part or whole of the foreign matter, it would not be considered as a 'concentrate'.

20. This position also emerges from the CBIC Circular dated 23.03.2012 which is reproduced below:

"Circular No. 9/2012-Cus., dated 23-3-2012

Government of India
Ministry of Finance (Department of Revenue)
Central Board of Excise & Customs, New Delhi

Subject: Applicability of exemption under Sr. No. 4 of the Notification 4/2006-CE., dated 1-3-2006 on import of Ore Concentrates - regarding.

Doubts have been raised whether on imports of Ore Concentrate classifiable under Chapter 26 of the First Schedule to the Customs Tariff Act, 1975, the benefit that is admissible to "Ore" under Serial Number 4 of the Notification No. 4/2006-CE., dated 1-3-2006 can be granted to the "Concentrate" of that Ore. The issue was taken up for discussion during the Conference of Chief Commissioners of Customs on Tariff and allied matters held in May 2011.

2. The matter related to: (a) whether the term 'Ore' includes Concentrate, and (b) Whether insertion of Chapter Note 4 in the Chapter 26 will have any impact on the admissibility of notification benefit to Concentrates, was examined. The Conference noted the HS definitions of Ore and Concentrate are as follows:

"The term 'ore' applies to metalliferous minerals associated with the substances in which they occur and with which they are extracted from the mine; it also applies to native metals in their gangue (e.g. metalliferous sands").

"The term 'concentrates' applies to ores which have had part or all of the foreign matter removed by special treatments, either because such foreign matter might hamper subsequent metallurgical operations or with a view to economical transport".

It was also seen that the recent changes in the Central Excise Tariff treating the concentration of ore as amounting to manufacture would not in any way change the definition of Ore or Concentrate for the purpose of classification. This has been reiterated in a number of judgments and also vide Board Circular No.696/12/2003, CX dated 26-2-2003 [2003 (152) E.L.T. T44].

3. In view of Chapter Note 4 to Chapter 26 of CETA, 1985 inserted vide Finance Act 2011, Ores and Concentrates are two distinct products. Thus, Concentrates suffer Central Excise duty being a manufactured product. The implication for imported Concentrates is that the benefit of exemption of additional duty of Customs leviable under Section 3 of Customs Tariff Act, 1975 in terms of a notification that applies only to Ores is no longer available to Concentrates, even if Concentrates and Ores fall under the same tariff heading.

4. **Thus, it is concluded in the Conference that the benefit of exemption notification under Sr. No. 4 of the Notification 4/2006-CE., dated 1-3-2006 will be available only to imported Ores and not to imported Concentrates."**

(emphasis supplied)

21. The show cause notice, in paragraph 18, has explained that foreign matter like alumina and silica contained in the ore, being the gangue, is required to be removed from the ore, and this process is called beneficiation. The relevant extract arising from paragraph 18 of the notice reads as follows: "Beneficiation is a process, which removes the gangue particle, like alumina and silica etc. from the iron ore. Basically it separates Fe_2O_3 or Fe_3O_4 from other impurities in the iron ore. In this process, the iron content is improved to the maximum possible extent. The highest can be 70%, i.e. the possible purest form".

22. What needs to be noticed is that the Supreme Court in **National Minerals Development Corporation** held, after referring to the dictionary/technical material that 'concentrate' consists of enriched ore segregated from waste in a concentration plant.

23. The relevant portion from the dictionaries, referred to in the aforesaid judgment of the Supreme Court are:

“(I) Dictionary of Mining Terms by Paul Thrush & Staff of the Bureau of Mines, 1968, edition, reprinted, 1990

‘concentrate’ is defined as follows:

- a) In mining the product of concentrate used in plural form as arrangement for treating the concentrate were complete.
- b) Concentrate are called ore.
- c) In mining, to separate ore or metal from its containing rock or earth.
- d) The concentrate of ore always proceeds by steps or stages.

(II) Dictionary of Mining Terms by Paul W. Thrush and the Staff of the Bureau of Mines (1968), reprint 1990)

‘concentrate’ is defined as follows:

a. In mining, the product of concentration. Used in plural form as "arrangements for treating the concentrates were complete." Concentrates are called ore at Joplin, Mo.; mineral at Michigan copper mines; and tailings in Black Hawk, Colo. Fay. b. In mining, to separate ore or metal from its containing rock or earth. The concentration of ores always proceeds by steps or stages. Thus the ore must be crushed before the mineral can be separated, and certain preliminary steps, such as sizing and classifying, must precede the final operations, which produce the finished concentrates. Ricketts, I. c. Can. Enriched ore after removal of waste in beneficiation mill. Hoffman. d. The clean product recovered in froth flotation. B.S. 3552, 1962. e. To intensify in strength or to purify by the removal of valueless or unneeded constituents; condense; intensify. Standard, 1964.

(III) Chambers Science and Technology Dictionary

‘concentrate’ and ‘concentrate plant’ are defined as under:

‘Concentrate plant’ (Min.Ext). Concentrator mill, reduction works, washing, cleaning plant. Buildings and installations in which ore is processed by physical, chemical and/or electrical methods to retain its valuable

constituents and discard as tailings those of no commercial interest.

'Concentrate' (Min.Ext.). The products of concentration operations in which a relatively high content of mineral has been obtained and which are ready for treatment by chemical methods."

24. It is, thus, evident from the HSN Explanatory Notes as also from the judgment of the Supreme Court and the dictionary meanings relied upon therein, that iron ore concentrate refers to an ore that has been subjected to special processes for removal of all or part of the foreign matter i.e. gangue contained in the ore, with which it naturally occurs.

25. The HSN Explanatory Notes do not specify what would construe to be special treatments by which the foreign matter is removed from the ore. However, the CBIC, after consulting the Ministry of Mines, has clarified this aspect by a Circular dated 17.02.2012 and the relevant portion is reproduced below:

"Circular: 332/1/2012-TRU dated 17-Feb-2012

Government of India

Ministry of Finance (Department of Revenue)

Central Board of Excise & Customs, New Delhi

Subject: Dutiability of "iron ore" and "iron ore concentrates"-
Clarification regarding.

A reference has been received from Bhuwaneswar Zone seeking clarification on the issue of whether "Iron ore lumps and fines" are dutiable as "concentrates" when subjected to crushing, screening, sizing or washing etc.

2. In Budget 2011, a Note was inserted in Chapter 26 of the First Schedule to the Central Excise Tariff to deem the process of converting "Ores" into "Concentrates" as a process amounting to manufacture. Both ores and concentrates are classifiable under Chapter 26 and while the term 'Ore' is defined in Note 2 of the said chapter, the term 'concentrate' is

not. HSN Explanatory Note spell out the scope of the term "Concentrate" as under:

"For the purposes of Headings 2601-2617, the term 'concentrates' applies to ores which have had part or all of the foreign matter removed by special treatments either because such foreign matter may hamper subsequent metallurgical operations or with a view to economical transport."

From the above definition, it is clear that removal of part or all of foreign material is envisaged for conversion of ores into concentrates. Ministry of Mines have clarified that no special treatment is involved in the crushing and screening of ore and the end-product can be termed as a concentrate only when the grade of ore is sufficiently improved through beneficiation. Federation of Indian Mineral Industries have also pointed out that several processes (in addition to crushing and screening) such as milling, hydraulic separation, magnetic separation, floatation & Concentrate thickening have to be undertaken for ores to be converted into concentrate.

3. Hence, it is clarified that the levy of excise duty is attracted only in cases where the product meets the definition of concentrate as per HSN Notes, that is, 'ores which have had part or all of the foreign matter removed by special treatments either because such foreign matter may hamper subsequent metallurgical operations or with a view to economical transport'.

4. The above position may be brought to the notice of Commissioners under your charge so that pending disputes, if any, may be decided accordingly."

26. The aforesaid Circular clarifies that crushing and screening are mere preparatory processes and do not constitute the special treatment contemplated in the Explanatory Notes, by which part or all of the foreign matter is removed. In other words, it has been clarified that ores that have been merely subjected to the processes of crushing and screening, cannot be said to have been concentrated, as the said processes do not result in removal of part or whole of the foreign

matter. It has been explained that crushing and screening followed with processes such as milling, hydraulic separation, magnetic separation, floatation and concentrate thickening have to be undertaken for ores to be converted into concentrate. In other words, the process of milling with hydraulic separation, magnetic separation, processes of concentrate thickening are, inter alia, the special processes and special treatments contemplated in the Explanatory Notes which result in removal of part or whole of the foreign matter.

27. In the instant case, both the show cause notice as also the impugned order, after extracting the pictorial representation from the global website of Vale International have categorically asserted that the mined ore at Carajas, Para, Brazil underwent two preparatory processes mainly crushing and screening at Carajas, Para, Brazil, before shipment of the same. It is evident from the aforesaid pictorial representation of the stage-wise extraction process of Iron Ores, that there are total of 11 stages involved from the extraction of the ore from the Carajas Mine to its shipment from Brazil. These sequential stages are titled in the pictorial representation as Infrastructure, Extraction, Transport, Crushing, Conveyor Belt, Screening, Stockyard, Recovery, Loading, Rotary car dumpers and Shipment. Out of these 11 stages, only 2 stages deal with physically preparing the ore for shipment, which are crushing and screening. In the process of crushing, the ore which has been mined and is in the shape of a boulder/uneven blocks of upto 15 meters, is crushed using a primary crusher into smaller size. The webpage further reads that the ore may pass through the crusher upto three times. The crushed ore is thereafter carried in a conveyor over 85 km, where it is screened. The

pictorial representation records that Vale has 17 production lines at its screening site, where the crushed ore is sorted basis the size of the crushed ore.

28. It is an undisputed position, as is also claimed by CBIC, that mere crushing and screening of ore, does not result in removal of part or whole of a foreign matter and that Iron Ore, which has been subjected to crushing and screening cannot be said to have been concentrated, by the removal of gangue i.e., the foreign matter from the ore. It needs to be noticed that both, the show cause notice and the impugned order, have in passing, contended that processes, beyond crushing and screening, have been undertaken on the Iron Ore at Carajas, Para, Brazil. However, no evidence has been led to even suggest, let alone prove, that other processing had taken place at Carajas, Para, Brazil. The burden to prove that processes beyond crushing and screening had been carried out was on the Revenue, but it failed to establish. It is, therefore, not possible to accept the said contention of the Revenue.

29. What needs to be now examined is whether Iron Ore Carajas Sohar supplied from Oman, which is a blend of Iron Ore Carajas and Iron Ore concentrate, in which the proportion of Iron Ore Carajas is 90-95% and that of Iron Ore concentrate is 5-10%, is a concentrate or not. The process of blending/mixing undertaken at Oman is a physical process where iron ore fines from the Carajas mines are mixed with iron ore concentrates from the Southeastern System in the ratio of 90-95% of iron ore fines from Carajas and 5-10% of Iron Ore concentrate. In this process, there is no removal of part or whole of the foreign matter and, therefore, the same cannot be said to be a

special treatment resulting in the ore becoming a concentrate. This apart, the blend of iron ore fines (90-95%) with iron ore concentrate (5-10%) would, by applying Note 3(b) to the General Rules of Interpretation to the Import Tariff, be classified as iron ore fines, as the essential character to the mixture is derived from the iron ore fines. The processes to which the imported iron ore fines have been subjected to, such as crushing, screening, and physical blending/mixing, are not processes by which gangue is separated from the mineral ore. It is only when the process of crushing and screening are followed with the process of milling and thereafter hydraulic separation, magnetic separation, floatation and concentrate thickening that the ore can be said to have been concentrated.

30. The impugned order, however, holds that Vale International was using water for removal of impurities. This finding has been arrived at by an incorrect extrapolation of the pictorial representation in the impugned order. It needs to be noted that the show cause notice had not made any reference to the aforesaid pictorial extract from the website. It is on the bases of the incorrect pictorial representation that the impugned order holds that at Cajaras, Vale was using several equipment such as filters, pumps, thickeners, magnetic separators, floatation column for removal of impurities. It is evident from the website of Vale that conventionally, where the ore is of a low grade, the use of water and equipment such as filters, pumps, thickeners, magnetic separators, floatation column, in addition to crushers and screens is envisaged. On the other hand, the website records that the Iron ore extracted at Carajas is rich iron ore and dry processing is undertaken. The Vale website does not admit use of any water for

processing or that there was any removal of part or whole of the gangue from the iron ore. The website of Vale, as has been relied upon by the Department, itself shows that from 2008 onwards it only undertakes dry processing.

31. The contention of learned special counsel for the Department that since Carajas is in the region where it rains almost the entire year, the processes carried out for removal of impurities cannot be said to be without the use of water, cannot be accepted. This submission overlooks the fact that only crushing and screening activities were undertaken at Carajas, Para, Brazil and that neither of the two would result in separation of part or whole of the foreign matter, which is a pre-requisite for concentrating the ore. This apart, the show cause notice has not made any reference to the aforesaid pictorial extract from the website.

32. Learned special counsel for the Department also contended that the imported iron ore was not the one that was naturally extracted, but an ore which was subjected to processes crushing, screening, blending. to make it fit for direct use in pellet making. In support of this contention, the learned special counsel for the Department relied upon the Technical Analysis report dated 06.05.2016 by Professor Rathod, VJTI and a letter dated 28.04.2016 of Shri D.K. Swamy, Administrative Officer, Indian Bureau of Mines, Ministry of Mines.

33. This contention of learned special counsel for the Department cannot also be accepted for the reason that the CBIC has itself in the Circular dated 17.02.2012 clarified that crushing and screening are mere preparatory processes and do not tantamount to concentrating

an ore, as there is no special treatment involved in the same and that it is only through the additional process of milling, hydraulic separation, magnetic separation, floatation and concentrate thickening that a part or whole of the foreign matter is removed, so as to concentrate an ore. Even the process of blending does not result in removal in any of part or whole of the foreign matter, so as to tantamount to concentrating the ore. The report dated 06.05.2016 of Dr. Rathod cannot be relied upon. Iron ore, being a naturally occurring product, the composition thereof as also the composition of the gangue associated with the same varies from mine to mine, location to location, region to region. There can be no basis to impute any certainty that alumina to silica ratio would always be greater than 1 in case of natural ores. The appellant had, in the reply, demonstrated that naturally occurring high grade iron ores, even in India at the Bachel and Bailadila of NMDC have the alumina to silica ratio less than 1. The impugned order as also the evidence relied in support of the same have not disputed this position. The report of Dr. Rathod could not, therefore, have been relied upon to hold that what had been imported by the appellant was Iron ore that had been concentrated. The contents of the letter dated 28.04.2016 of Shri D.K. Swamy, Administrative Officer in the Indian Bureau of Mines are contrary to the opinion of the Ministry of Mines, as communicated of the Circular dated 17.02.2012.

34. The contention of learned special counsel for the Department that the imported goods were fit for directly being used in pellet making cannot also be accepted. Apart from the fact that this may not

be a factor for determining whether the goods that had been imported were 'concentrate', even otherwise, it is not in conformity with the statement of Shri Jyotindra Deshmukh who was handling the operations of Pellet Plant of the appellant.

35. It, therefore, follows that the process of crushing and screening undertaken on the Iron Ore after they have been mined at Carajas, Brazil and subsequent blending at Oman with 5-10% iron ore concentrate would result in classification of the goods imported under CTI 2601 11 31 as Iron Ore fines and would consequently be entitled to the benefit of exemption from payment of CVD under the notification dated 17.03.2012.

36. The impugned order dated 30.11.2016 passed by the Principal Commissioner, therefore, cannot be sustained and is set aside. The appeal is, accordingly, allowed.

(Order Pronounced on 03.06.2022)

**(JUSTICE DILIP GUPTA)
PRESIDENT**

**(C.J. MATHEW)
MEMBER (TECHNICAL)**

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

REGIONAL BENCH

CUSTOMS APPEAL NO. 85365 OF 2017

(Arising out of Order-in-Original No. CCP/ADJ/AKJ/06&07/2016 dated 30.11.2016 passed by the Principal Commissioner of Customs (Preventive), Mumbai)

M/s Amba River Coke Ltd.

2nd Floor, Innovation Centre
Geethapuram, Dolvi, Taluka Pen,
District Raigad-402 107

...Appellant

VERSUS

**Principal Commissioner of
Customs (Preventive),**

Marine & Preventive Wing
2nd Floor, New Customs House,
Ballard Estate,
Mumbai 400 001

...Respondent

APPEARANCE:

Shri Vipin Jain, Shri Vishal Agarwal and Shri Abhishek Kapadia, Advocates
for the Appellant

Shri S.K. Mathur, Special Counsel for the Department

CORAM: HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

Date of Hearing: 27.04.2022

Date of Decision: 03.06.2022

ORDER

Order Pronounced on June 03, 2022.

**(JUSTICE DILIP GUPTA)
PRESIDENT**