

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

Customs Appeal No.10047 of 2022

(Arising out of OIO-AHM-CUSTM-000-COM-010-21-22 dated 01/11/2021 passed by Commissioner of CUSTOMS-AHMEDABAD)

PRADIPKUMAR P PATEL

.....Appellant

Director Vishwa Glass And Ceramics P Ltd Wing A-1502,03,04 15th Floor The Capital Opp
Hetarth Party Plot Science City Road Sola
Ahmedabad, Gujarat

VERSUS

C.C.-AHMEDABAD

.....Respondent

Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

WITH

- **Customs Appeal No.10048 of 2022 (VISHWA GLASS AND CERAMICS P LTD)**
- **Customs Appeal No.10090 of 2022 (QUANTAS GLASS AND CERAMICS P LTD)**
- **Customs Appeal No.10091 of 2022 (PRADIPKUMAR P PATEL)**
- **Customs Appeal No.10094 of 2022 (SUN BORAX INDUSTRIES)**
- **Customs Appeal No.10095 of 2022 (SHRI KETAN MANAHAR SHAH)**
- **Customs Appeal No.10123 of 2022 (RAJ BORAX PVT LTD)**
- **Customs Appeal No.10195 of 2022 (ASTRON INTERNATIONAL P LTD)**
- **Customs Appeal No.10196 of 2022 (UPESH THAKKAR)**
- **Customs Appeal No.10203 of 2022 (ORGANIC INDUSTRIES PVT LTD)**
- **Customs Appeal No.10204 of 2022 (SHRI NARENDRA J JAKKANI)**
- **Customs Appeal No.10206 of 2022 (NAHAR COLOURS COATING P LTD.)**
- **Customs Appeal No.10207 of 2022 (RAJKUMAR SURANA)**
- **Customs Appeal No.10210 of 2022 (WELSUIT GLASS AND CERAMICS P LTD)**
- **Customs Appeal No.10211 of 2022 (GAURAV THAKKAR)**
- **Customs Appeal No.10124 of 2022 (SHRI GIRISH MEHTA)**

• **Customs Appeal No.10162 of 2022 (STEADFAST IMPEXP)**

(Arising out of OIA-AHM-CUSTOM-000-COM-017-21-22 dated 01/12/2021 passed by Commissioner of CUSTOMS-AHMEDABAD)

(Arising out of OIO-AHM-CUSTOM-000-COM-020-21-22 dated 22/12/2021 passed by Commissioner of CUSTOMS-AHMEDABAD)

(Arising out of OIO-AHM-CUSTOM-000-COM-025-21-22 dated 04/02/2022 passed by Commissioner of CUSTOMS-AHMEDABAD)

(Arising out of OIO-AHM-CUSTOM-000-COM-024-21-22 dated 25/01/2022 passed by Commissioner of CUSTOMS-AHMEDABAD)

(Arising out of OIO-AHM-CUSTOM-000-COM-023 dated 25/01/2022 passed by Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

(Arising out of OIO-AHM-CUSTOM-000-COM-026-21-22 dated 04/02/2022 passed by Commissioner of CUSTOMS-AHMEDABAD)

APPEARANCE:

Shri J C Patel, Shri A Banerjee, Shri T. Vishwanathan, Shri Rahul Gajera, Shri Manish Jain,(Advocates) for the Appellant
Shri Vikas Mehta, Consultant for the Appellant

Shri Dinesh Prithiani, Assistant Commissioner (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

Final Order No. A/ 10118-10134 /2023

DATE OF HEARING: 25.07.2022
DATE OF DECISION: 25.01.2023

RAMESH NAIR

The issue involved in the present case is that whether the appellants' import of 'Boron Ore' is eligible for exemption under serial no.113 of Customs Notification No.12/2012-Cus dated 17.03.2012 for the period 01.04.2015 to 30.06.2017 and under serial no. 130 of Customs Notification No.50/2017 dated 30.06.2017 for the period after 01.07.2017.

02. Shri J C Patel, learned counsel appeared on behalf of Vishwa Glass & Ceramics Pvt. Ltd. and Shri Pradipkumar Patel. He submits that the lower authorities had denied the exemption on the ground that the Boron Ore imported by the appellant is not naturally mined Boron Ore but the impurities have been removed from the product therefore, the same is concentrated Boron Ore which is not eligible for exemption notification. Only naturally mined Boron Ore is eligible for exemption.

2.1 He submits that the test report by two laboratories confirmed that the goods imported is Boron Ore. Once it is decided that the goods is Boron Ore whether it is concentrated or otherwise, exemption is admissible. He placed reliance on the various following judgments:-

- H.P.L. Chemicals Ltd v CCE-2006 (197) ELT 324
- Orient Ceramics & Inds Ltd v CC-2008 (226) ELT 483 (SC).
- Tata Tea Ltd v CCE-2004 (164) ELT 315
- Indian Oil Corporation v CCE-1991 (53) ELT 347.
- Kantilal Manilal & Co v CC-2004 (173) ELT 35
- CC v Finesse Creation Inc- 2009 (248) ELT 122 Bom
- Commissioner v Finesse Creation Inc-2010 (255) ELT A120 (SC)
- Comr. v Sudarshan Cargo P. Ltd - 2010 (258) ELT 197 (Bom)
- Chinku Exports v CC - 1999 (112) ELT 400
- Commissioner v Chinku Exports- 2005 (184) ELT A36 (SC)
- Shiva Kripa Ispat P. Ltd v CC-2009 (235) ELT 623-Tri-LB
- Comr. v Shiva Kripa Ispat P. Ltd -2015 (318) ELT A259 (Bom)
- Natwarlal & Co v CC-2012-TIOL-2171-CESTAT-MUM 15.Kores (India) Ltd. 2019(5) TMI 922.
- Kores (India) Ltd.- 2019 (5) TMI 922

2.2 He also argued that since there is no suppression of fact, extended period could not have been invoked. Other learned advocates Shri A. Banerjee, Shri Vikas Mehta, Shri T. Vishwanathan, Shri Rahul Gajera and Shri Manish Jain, appeared for other appellants who adapted the argument made by Shri J C Patel and reiterates the grounds of Appeals.

03. Shri Dinesh Prithiani, learned Assistant Commissioner (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

04. We have carefully considered the submissions made by both the sides and perused the records. We find that the exemption under the aforesaid notification is provided to goods viz. 'Boron Ore'. From the perusal of the finding of the adjudicating authority, the test report of the product shows that the goods is 'Boron Ore' however, the same obtained after removal of impurities. The adjudicating authority has relied upon Wikipedia and Website for the meaning of 'Ore'. In our considered view, when the test reports are available on record, there is no need to go to the website and Wikipedia. Whether the goods will remain as Ore after removal of impurities has been considered in various judgments cited by the appellants. However, the adjudicating authority has not properly considered various defence

submission made by the appellants and the judgments relied upon by the appellants.

05. Accordingly, we are of the view that matter needs to be reconsidered in the light of the test reports and judgments relied upon by the appellant. All the issues are kept open. Impugned orders are set aside. Appeals are allowed by way of remand to the adjudicating authority.

(Pronounced in the open court on 25.01.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Mehul