IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.1

Customs Appeal No. 78707 of 2018

(Arising out of Order-in-Appeal No.KOL/CUS(PORT)/AA/1279-1280/2018 dated: 03.07.2018 passed by Commissioner of Customs (Appeals), Kolkata.)

Commissioner of Customs (Port), Kolkata
(Customs House, 15/1 Strand Road Kolkata- 700001.)

...Appellant

VERSUS

M/s. BDG Metal & Power Ltd.
(Plot No. K-1472-L-2742M-2742, WBIIDC Growth Center, Borjara, College Road, Bishnupur, Bankura, West Bengal-722 202.)

...Respondent

APPERANCE :
Present for the Appellant: Mr. A. Chaudhary, Authorized Representative
Present for the Respondent: Mr. N.K. Chowdhury, Advocate

CORAM:
HON'BLE MR. ASHOK JINDAL MEMBER (JUDICIAL)
HON'BLE MR. RAJEEV TANDON MEMBER (TECHNICAL)

FINAL ORDER No……77586/2023

DATE OF HEARING :22.11.2023

DATE OF DECISION : 22.11.2023

PER: RAJEEV TANDON

Revenue has filed the impugned appeal assailing the Order in Appeal Passed by the learned Commissioner of Customs (Appeal), Kolkata bearing Order in Appeal No. KOL/CUS(PORT)/AA/1279–1280/2018 dated 03.07.2018.

2. The facts of the case are that M/s. BDG Metal and Power Ltd. imported manganese ore lumps, crushed, screened, washed with manganese content of 43%/45% approximately vide seven and three Bills of Entry during the

period July to October 2011. The said Bills of Entry were assessed finally at NIL rate of CVD under Notification No. 4/2006–CE dated 01.03.2006 and were cleared for home consumption thereafter. It is submitted by the department that according to Harmonised System of Nomenclature (HSN) to qualify for classification under chapter heading 2601 to 2617 processes of ore concentration allowed include physical, physio-chemical operation provided they are normal to the preparation of the ore for the extraction of metal and such operation must not alter the chemical composition of the basic compound. Such operations include crushing, grinding, magnetic separation, gravimetric, separation and floatation. It is stated that by virtue of chapter note 4 to chapters 26 of the Central Excise Tariff Act, (1985 with effect from 01.03.2011) the activity of processing/conversion of ore into concentrate (washing, crushing, screening, drying etc.) in relation to items of this chapter amounts to manufacture. It is therefore the contention of the department that the manganese ore imported by the respondent importer was concentrate and therefore the imported goods were not eligible for benefit of CVD under Notification No. 4/2006 – CE dated 01.03.2006.

3. The learned Commissioner (Appeals) vide his order referred to supra has however, held that the appellant in the present matter was eligible for the benefit of Notification No. 4/2006-CE dated 01.03.2006, vide serial number 4 thereof and accordingly directed the lower authority to reassess the impugned goods, allowing the duty exemption benefit under notification ibid.

4. The learned Authorised Representative submitted that the imported goods in fact were concentrate and not ore as they had undergone processes to render the goods, derived upon mining, as marketable and which processes amount to manufacture, converting the ore to concentrate as per

explanatory notes and Board's Circular NO. 9/2012 dated 23 March 2012. He submitted that in relation to products Chapter 26, the process of converting Ores into Concentrates amounts to manufacture, hence exemption under Sl. No. 4 of Central Excise Notification No. 04/2006 could not be straight away applied to the products of Chapter 26. According to HSN, as already stated, to qualify for classification under heading 2601 to 2617, the process of ore concentration allowed include physical, physio-chemical or chemical operations provided they are normal to the preparation of the ores for the extraction of metal and such operation must not alter the chemical composition of the basic compound. Such operation includes grading, crushing, grinding, magnetic separation, gravimetric separation, floatation, screening, drying, calcination, roasting to oxidize, reduce or magnetize the ore etc. He impressed that Chapter Notes are a statutory part and parcel of the tariff schedule, and assist the right interpretation and classification of goods. Thus as the ore has undergone processing to increase the marketability of the product and the percentage of Manganese in the processed ore is definitely a higher percentage. All marketable Manganese ore would compulsorily go through the process of grinding, crushing, washing etc. converting the ore to concentrate as per definition of manufacture under Section 2(f) of the Central Excise Act 1944. The relevant part of the definition is as under:

Section 2 (f) of the Central Excise Act, 1944 read as under:

2(f) ***"manufacture"*** *includes any process,-*

(i) incidental or ancillary to the completion of a manufactured product;

(ii) which is specified in relation to any goods in the Section or Chapter Notes of the first schedule to the Central Excise Tariff Act, 1985 (5 of 1986) as amounting to manufacture;

(iii) which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods……..

5. Repudiating the arguments of the department, the learned Advocate Shri N.K Chowdhury for the appellant submitted that the department's claim were without any basis, that they had imported manganese ore only and were therefore rightly eligible for claiming the benefit of the exemption Notification No. 4/2006- CE dated 01.03.2006. The same has therefore been rightly allowed to them, by the learned Commissioner (A). He also pointed out that the department could not point out any discrepancy at the time of the examination of the imported goods, as the imported goods were examined thoroughly by the examining officer, nor did the department, undertake any test of the said goods to substantiate their case. Further, he vehemently argued that when an expression in the exemption notification is clear and there is no ambiguity, nothing can be interpreted beyond the plain words of the notification. That the language of the said notification is quite clear and the Sr. No. 4 of the notification covers the goods imported by them, in the instant case with Nil condition. He further added that the lower authority in his order in original had not disputed that the item is not ore but was a concentrate. The learned Advocate submitted that the ore at the time of mining is required to be crushed, screened and washed before shipment can be affected. Such physical processes cannot be considered as amounting to manufacture, moreover, no purity percentage had been prescribed vide the impugned notification. He added that the department was not able to supply any evidence to dispute the purity of the imported product. Apart

from the above the learned Advocate also submitted that there was no cut-off limit of mineral content in the ore, that the department did not challenge the importation after that final assessment of Bill of Entry and therefore the demands were not maintainable. He finally added that in any case the entire exercise was revenue neutral.

6. We have heard the two sides and perused the case records. The facts of the case are not much in dispute. It is settled law that there is no scope for intendment in interpretation, as long as the wordings in the exemption notification were clear and unambiguous and that nothing can be interpreted beyond the plane wordings of the notification. For ready reference, the impugned notification is extracted hereunder below:

> *"[Notification No. 4/2006-CE., dated 1-3-2006]*
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> ***Exemption and effective rate of duty for specified goods of Chapters 25 to 49***
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> *In exercise of the powers conferred by sub-section (1) of Section 5A of the Central Excise Act, 1944 (1 of 1944), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts excisable goods of the description specified in column (3) of the Table below read with the relevant List appended hereto, as the case may be, 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 Central 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 Central 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 specified in the Annexure to this notification and the Condition number of which is referred to in the corresponding entry in column (5) of the Table aforesaid.

Explanation.- For the purposes of this notification, the rates specified in column (4) of the said Table are ad valorem rates, unless otherwise specified.

S.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)*
…….	…….	……		
4.	*2601 to 2617*	*Ores*	*Nil*	*-*

Further, note 2 of chapter 26 under Central Excise tariff reads as under:

"17. Note 2 of Chapter 26 under Central Excise Tariff reads as under:

2. For the purposes of headings 2601 to 2617, the term "ores" means minerals of mineralogical species actually used in the metallurgical industry for the extraction of mercury, of the metals of heading 2844 or of the metals of Section XIV or XV, even if they are intended for non-metallurgical purposes. Headings 2601 to 2617 do not, however, include minerals which have been submitted to processes not normal to the metallurgical industry."

7. Two questions therefore essentially emerge in the present matter, viz.

(a) Whether the processes as are said to be undertaken and worked upon the mined ore would qualify to be as such as would catapult the product imported to the definition of a concentrate and as removed to be an ore.

(b) Whether in the circumstances of the pre-shipment processes undertaken, read with the chapter note the imported goods would be entitled to the benefit of the said exemption of CVD. It would therefore be imperative to examine the legal position as arises for interpreting an exemption notification. Thus:

7.1. In the case of **EXCON Bldg Material Mfg Co. Pvt. Ltd. Vs. CCE[1],** a 3 member of the apex court had categorically held that where the wordings of a Notification are clear then the plain language of the Notification must be given effect to. Likewise, in the case of **CCE Vs. Sunder Steels[2],** the apex court held that the Notification has to be interpreted on its wording and no words, not used in the Notification, can be added to bring out its interpretation there being no warrant to so do. Further, the Hon'ble Karnataka High Court in the case of **India Sugars & Refineries Ltd., Hospet Vs. UOI & Others[3],** had observed as under:

> *"When the expression used is plain and meaningful there is no scope for assuming an ambiguity and trying to interpret it on a supposed intention of the makers of the notification."*

7.2. Dwelling extensively on the subject of interpretation the Hon'ble Supreme Court in **Hansraj Gordhandas Vs. H.H. Dave, Assistant Collector of Central Excise and Customs, Surat and Others[4],** while considering the interpretation of an exemption provision under the Central Excise and Salt Act, 1944, observed as follows:

> *"It is well established that in a taxing statute there is no room*

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1. 2005 (186) ELT 263 SC
2. 2005 (181) ELT 154 SC
3. 1983 (12) ELT 209 (Kar)
4. AIR 1970 S.C. 755

for any intendment but regard must be had to the clear meaning of the words. The entire matter is governed wholly by the language of the notification. If the tax payer is within the plain terms of the exemption it cannot be denied its benefit by calling in aid any supposed intention of the exempting authority."

Moreover, in the case of **Commissioner Sales-Tax, U.P. Vs. Modi Sugar Mills Ltd.[5],** Hon'ble Shah J. speaking for the majority in the Constitution Bench, had observed thus:-

"In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The Court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed: it cannot imply anything which is not expressed; it cannot import provisions in the statutes so as to supply any assumed deficiency"

7.3. Justice G.P. Singh in his treatise the "Principles of Statutory Interpretation" (Sixth Edition 1966) has written that:

"The well - established rule in the familiar words of LORD WENSLEYDALE, reaffirmed by LORD HALSBURY and LORD SIMONDS, means: "The subject is not to be taxed without clear words for that purpose; and also that every Act of Parliament

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5. AIR 1961 SC 1047

must be read according to the natural construction of its words". In a classic passage LORD CAIRNS stated that the principle thus: "If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to be, to the judicial mind. On the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of law the case might otherwise appear to be. In other words, if there be admissible, in any statute, what is called an equitable, construction, certainly, such a construction is not admissible in a taxing statute where you can simply adhere to the words of the statute." VISCOUNT SIMON quoted with approval a passage from Rowlatt, J. expressing the principle in the following words: "In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used." Relying upon this passage Lord Upjohn said: "Fiscal measures are not built upon any theory of taxation".

8. Thus from the aforesaid legal position, it clearly emerges that while interpreting an exemption notification:

- *One has to look merely at what is clearly said;*
- *Nothing is to be read in, nothing is to be implied;*
- *It should not be interpreted on any presumption or assumption;*

- *The Court must look squarely at the words of the statute and interpret them;*
- *It must interpret a taxing statute in the light of what is clearly expressed;*
- *It cannot imply anything which is not expressed;*
- *It cannot import provisions in the statute so as to supply any assumed deficiency.*
- *When the expression in an exemption notification are used in plain and meaningful manner, there is no scope for assuming an ambiguity and trying to interpret it on a supposed intention of the makers of the notification;*
- *Where the wordings of a Notification are clear then the plain language of the Notification must be given effect to. An interpretation which is not borne out by the plain wordings of the Notification is unacceptable.*
- *The Notification has to be interpreted on its wording. No words, not used in the Notification, can be added.*

9. It is of significance to note that the description of the goods mentioned in the Bills of Entry was never disputed by the department at the time of assessment or at the time of physical examination of the imported cargo. No representative samples were drawn and got tested by the department. To maintain that any, manufacturing process had actually been undertaken on the subject goods therefore lacks credence. Physical processes said to be undertaken on the ore, are actually in the nature of dressing of the ore for purpose of export and not in particular aimed at generating concentrate out of the ore. Before enabling the export of the goods mined from the earth, it would certainly require crushing, screening or washing for purpose of

shipment. It has nowhere been claimed by the department that the processes undertaken at the suppliers end, in effect, resulted in enhancing the purity of the manganese resulting in the generation of concentrate. The Hon'ble Apex Court in the case of Manganese Ore India Limited versus State of Madhya Pradesh (Civil Appeal 2464/2016) has observed as under:

> 21. (Ref:- **Manganese Ore India Ltd. Vs. State of Madhya Pradesh & Ors.** [Civil Appeal No. 2464 of 2016 arising out of S.L.P. (Civil) No. 9246 of 2012] Civil Appeal Nos. 2465-2467 of 2016 arising out of S.L.P. (Civil) Nos. 10643-10645 of 2012],)
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> *"2. As the commonality of controversy centres around interpretation of the terms "mineral" and "processing" under the definition of "mine" as defined under Explanation (b) of Part-B of Madhya Pradesh Electricity Duty Act, 1949 (for brevity, "the Act"), we shall enumerate the scheme of the Act and the various litigations that have taken place and thereafter advert to the facts in each case. For brevity and to avoid repetition, we have initially referred to the litigation and different orders passed in the case of Hindustan Copper Limited.*
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> *6. After the remit, the High Court heard the writ petition and dismissed the same. The order passed by the High Court was assailed in appeal, by special leave, in Civil Appeal No. 6725 of 2008. In the second round, the two-judge Bench stated the facts in detail which are to the effect that the appellant therein is engaged in extraction of copper ore, by open cast mining process involving drilling and blasting the ore in the open pit mine, the ore in the form of boulders are transported to the*

primary crusher (situated at a distance of 2.53 km from the mine), where it is crushed into pebbles/pieces and such crushed ore is then carried on a conveyor to a secondary crusher (situated at about 5 km from the mine) for further crushing into smaller pebbles. After the said stage, small pieces/pebbles are then carried by a conveyor to the Concentration Plant (situated at 5.5 km from the mine).

7. This Court further proceeded to state the facts adumbrated as projected by the appellant before the High Court. It was asserted that:-

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> *4. In the Concentrator Plant, the ore is milled into powder in the ball mills. Such powder mixed with water is carried in the form of slurry to floatation cells. In the floatation cells, the slurry is subjected to froth floatation process and the copper concentrate is removed and dried in vacuum driers and stored in concentrate storage sheds. The tailing pumps are at a distance of 8 km. A large quantity of water is required for the Concentrator Plant for being used in milling. Water is also required for the factory township. The required water is pumped from the mines through pumps located at an intake well (situated at a distance of 10 km from the mine). From the intake well, water is pumped to water treatment plant (situated at a distance of 6 km from the mine).*
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> *5. According to the appellant, its activities consist of two distinct parts. First is mining, that is, drilling, blasting and*

collecting of ore which is carried on at mine pit. This activity is carried on in the mine area registered under the Mines Act, 1952. The second is processing, which is carried on at the primary crusher, the secondary crusher and the Concentrator Plant. The processing (manufacturing) part of the activities are carried on in the factory area. The primary crusher, the secondary crusher, the bal mill, the Concentrator Plant, the tailing pumps, the intake well and the water treatment plant are situated away from the mine, at distances varying from 2.5 km to 10 km and are registered separately as a "factory" under the provisions of the Factories Act, 1948. The open pit mine (mining area) and the processing plants/machineries (factory area) are all situated in a large tract of land taken on mining lease from the State Government.

8. The two-Judge Bench adverted to the chronology of the case and noted that the principal grievance of the appellant therein pertains to the definition of "mine" the effect of which is to make processing as part of mining and the prescription of a higher rate of duty for "mines" (that is composite activity of mining and processing), while prescribing a lesser rate for other categories of industries. That apart, the Court taking note of the fact that classification of factories into two categories: (a) those which are adjacent to a mine and used for crushing, processing, treating and transporting the mineral; and (b) other factories is permissible."

This is to clearly bring to the fore the distinction between the mining of the ore and the processes required to convert the ore into concentrate.

10. It has been held by the apex court that the words 'crushing', 'treating' and 'transporting' are words of narrower significance and the word 'processing' used between these words cannot be given a very wide meaning as the word 'processing' takes its meaning in the cognate sense. In other words, the general word 'processing' will be restricted to the sense conveyed by the words 'crushing', 'treating' and 'transporting'. It clarified that the word 'processing' would mean those processes with the help of hands or machineries connected and linked to mining activity. It would certainly not include any process by which a new or different article other than the one which has been mined is produced. It is so on account of the composite activity of mining and processing. It certainly would not include processes that would lead to creation/production of a different commodity, as known in the commercial parlance.

10.1. The apex Court had clarified that the term 'processing' would depict such activities as render the mineral mined marketable, saleable and transportable, without substantially changing the identity of the mineral, as mined. It there is a substantial change at the mineral mined and the process results in a different commodity being produced or transforming and completely changing the mineral, it would fall outside the scope of the word 'processing'. With reference to the subject of minerals mined, the apex court had the following to say:-

> *"The word 'mineral' in the Explanation is the product which was mined and is put to 'crushing', 'processing', 'treatment' and 'transporting' the mineral. In other words, mineral means*

mineral which was mined and not a new product created by using or processing the mineral mined."

10.2. The sum total of the various processes to which the ores are subjected to, in order to separate and discard their worthless fractions by essentially physical means are called "Ore Dressing". The various modes of Ore Dressing include handpicking, sorting, screening, washing, jigging, magnetic separation, crushing, grinding, etc. In this process, there is no change in the chemical composition and properties of mined mineral, before and after processing/dressing to make it saleable. It is important to point out that mineral/dressing is a subject matter of Mineral processing.

11. The respondent further relies on the Tribunal's decision in the case of **Amba River Coke Ltd. Vs. Pr.Commissioner of Customs (Prev.) Mumbai[6],** the relevant para of the said decision are enumerated as below:

"29. What need 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

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6. 2022 (381) ELT 704 T

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 apply 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 olds that at Cajaras, Vale was using several equipment such as filters, pumps, thickeners, magnetic separations, 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 6-5-2016 by Professor Reathod, VJTI and a letter

dated 28-4-2016 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 17-2-2012 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 of whole of the foreign matter, so as to tantamount to concentrating the ore. The report dated 6-5-2016 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 Bacheli 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 28-4-2016 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 17-2-2012."

12. In the instant case the appellant has imported "Manganese Ore Lumps, crushed, screened, washed having 'Mn' content of 43%/45% (approx)" and the lower authority did not dispute the item to be 'Ore'. The physical processes of crushing, screening and washing in any way are not such as would contribute to enriching the Manganese percentage in the natural product mined. That as we have noticed in the Apex Court's decision cited in para 8 supra is undertaken by processing the mined products in a Concentrator Plant. The imported goods have certainly not been subjected to any operation in the Concentrator Plant prior to their import. As such we notice striking similarities in the present matter with the enunciation of law as held by the co-ordinate bench of this Tribunal in the case of **Amba River Coke Ltd.** supra. It certainly cannot be subjected to rigours of a concentrate. In fact a concentrate undisputedly requires to have undergone certain manufacturing processes as explained by the Hon'ble Apex Court. The various modes of Ore Dressing could include handpicking, sorting, screening, washing, jigging, magnetic separation, crushing, grinding, etc. By way of these processes there is no change in the chemical composition and properties of a mined product. The operations carried out before and after processing/dressing are only to make it saleable and for ease of handling in transport. It is important to point out that mineral/dressing of ore cannot be said to leading to formation of a concentrate.

13. The fact that the lower authority at the time of assessment and examination has not disputed nor have they subjected the imported goods to

chemical analysis and in view of our discussions above and the proponents of law as laid out by the Hon'ble Apex Court and the Tribunal in the decisions referred supra, we are of the view that the order of the learned Commissioner (Appeals), cannot be faulted upon. We therefore find no merit in the appeal filed by the revenue. The same is therefore dismissed and the order of the learned Commissioner (Appeals), upheld.

(Operative part of the order was pronounced in the open Court)

Sd/-

(Ashok Jindal)
Member (Judicial)

Sd/-

(Rajeev Tandon)
Member (Technical)

K.M.