CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH – COURT NO. 01

CUSTOMS Appeal No. 12356 of 2018-DB

[Arising out of Order-in-Original/Appeal No MUN-CUSTM-000-APP-087-18-19 dated 21.06.2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD]

Alfa Exim India **...Appellant**

85, Gidc Estate, Behind Hotel Milestone, Motipura,
Himmatnagar,
Sabarkantha,
Gujarat-383001

VERSUS

C.C.-Mundra **...Respondent**

Office Of The Principal Commissionerate Of Customs, Port User Buld. Custom House Mundra, Mundra
Kutch
Gujarat-370421

APPEARANCE:
Shri Amal Dave, Advocate appeared for the Appellant
Shri Himanshu P Shrimali, Superintendent (Authorized Representative) for the Respondent

CORAM: HON'BLE MEMBER (TECHNICAL), MR. RAJU
HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA

FINAL ORDER NO. A/ 11735 /2023

DATE OF HEARING:21.08.2023
DATE OF DECISION:21.08.2023

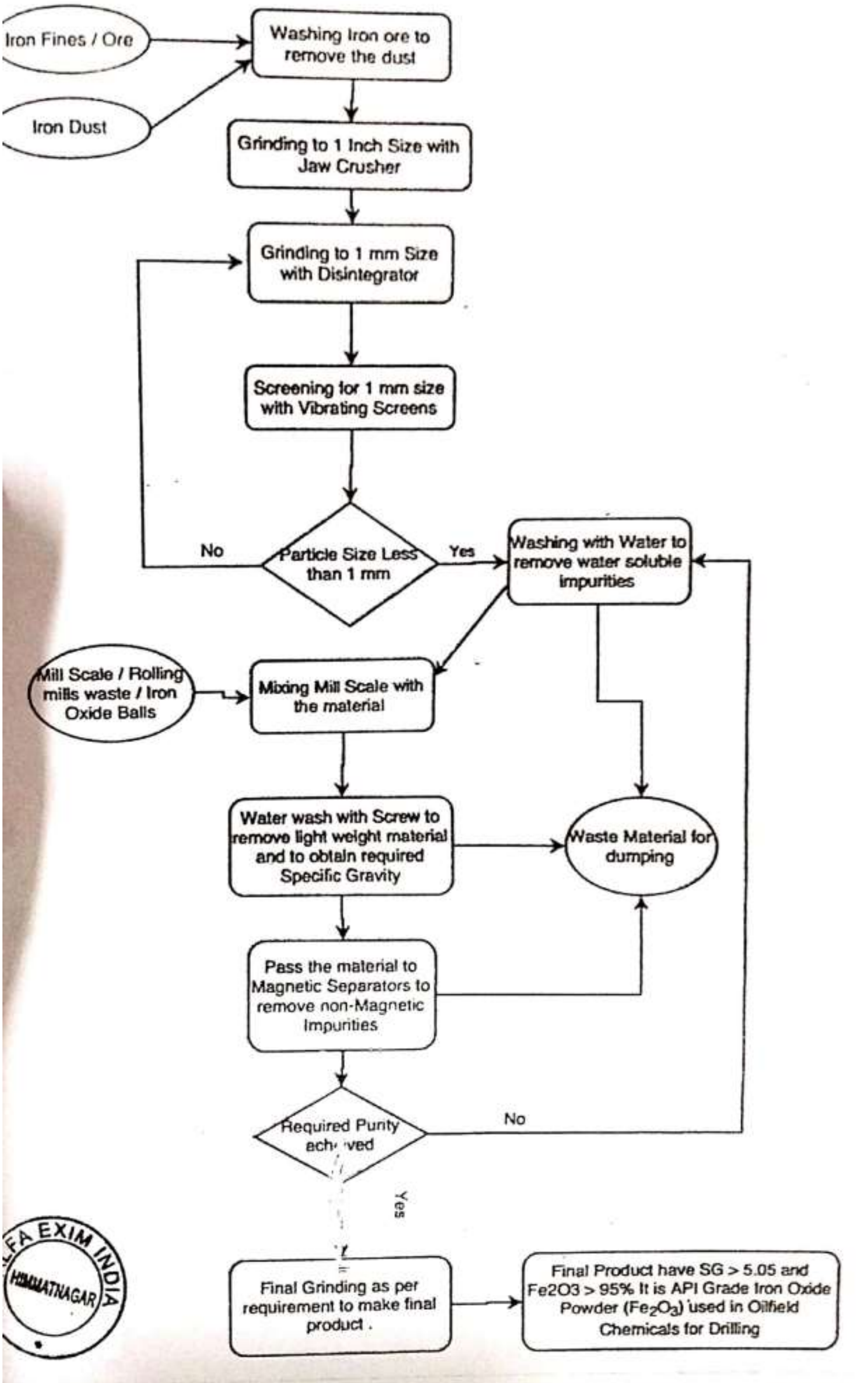
SOMESH ARORA

The instant case pertains to export consignment. The appellant exported Iron Oxide Powder falling under chapter 28211010, as against that department sought to classify the same as Iron ore relying on chemical examiner report which is reproduced below:

" The test result vide Report no. 1470 dated 18.11.2015 from the Custom House Laboratory, Kandla was received. The report of Chemical Examiner is as under:

" the sample received is in form of blackish brown fine powder. It is mainly composed of Iron together with siliceous matter(Iron ore). Iron content =65.7% by wt. siliceous matter=4.4%. Sealed remnant sample returned herewith."

2. The report *inter alia* stated that iron content was more than 65.7% and there were some element roughly 4.4% of siliceous matter. The department therefore opined that this product was classifiable under Tariff Heading 26011119. The appellants produced before the lower authority a flow chart indicating that they have done some process on the Iron Ore obtained by them, which are running pg. 27 of the paper book and is reproduced below:


Iron Fines / Ore
Iron Dust
Washing Iron ore to remove the dust
Grinding to 1 Inch Size with Jaw Crusher
Grinding to 1 mm Size with Disintegrator
Screening for 1 mm size with Vibrating Screens
Particle Size Less than 1 mm
No
Yes
Washing with Water to remove water soluble impurities
Mill Scale / Rolling mills waste / Iron Oxide Balls
Mixing Mill Scale with the material
Water wash with Screw to remove light weight material and to obtain required Specific Gravity
Waste Material for dumping
Pass the material to Magnetic Separators to remove non-Magnetic Impurities
Required Purity achieved
No
Yes
Final Grinding as per requirement to make final product .
Final Product have SG > 5.05 and Fe2O3 > 95% It is API Grade Iron Oxide Powder (Fe2O3) used in Oilfield Chemicals for Drilling
EXIM INDIA
HIMMATNAGAR

2.1 As against this while considering the Commissioner (Appeals) in para 10.1 dealt with the same as below:

> *"10.1. In this regard, I find that the adjudicating authority has correctly observed in para 21 of the impugned order that the Section note no.2 is indicative of the fact that the Ores until and unless subjected to further processes, so as to gain a change in classification, continue to remain the same and in the proportion as mentioned under Customs Tariff heading No.26010010. The Chemical report is indicative of the proportion of Iron in the content of the goods to be exported in as much as the same carried the characteristics of Iron Ore, as suggested by the Chemical Examiner. However, nothing is there on the records to prove the fact that the commodity in question viz. "Iron Oxide Powder" has emerged out of any manufacturing process, so as to classify the goods as sought by the exporter in the instant case. The Chemical examination report is self-contained report and cannot be overlooked in the instant case. I find that the appellant has not furnished any evidences to show that the goods were undergone any manufacturing process."*

3. We find that the requirement of the Sections Note to chapter 26 is as follows:

> *"For the purposes of headings 2601 to 2617, the term "ores" means minerals of mineralogical pecies 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."*

The Advocate submits that the process carried out by them were such that their initial product became unfit for metallurgical industry and was useable in oilfield.

3.1 On being confronted with the foregoing submissions of the Advocate, the Learned AR reiterated the findings of the lower authority.

4. Considered. We find that the Section note Tariff Heading 2601 to 2617 to Chapter 26 lays down that the minerals falling under chapter 26, should not have been subjected to processes which are not normal to the metallurgical industry. It is claimed by the appellants that processes carried out by them make it fit for use in oilfield chemicals. We, therefore, find there was a definite claim by the party by virtue of above flow chart that they had subjected the Iron Ore to various processes, that no more allowed it to be considered product of metallurgical industry.

4.1 Learned Commissioner (Appeals) while dealing with the proposition extended the scope of the same by using expression "manufacturing processes'. We find in the statute only the requirement of 'processes' having been under taken is existing in Section note to Chapter 26, so as to make it no more a metallurgical item. However, both the lower authorities have not considered the processes as above in the flow chart and whether processes done by them have made item it fit for oilfield industry as claimed. In which case it will be an item of Chapter 26, but of Chapter 28.

5. In view of the foregoing, we remand the matter back to the Commissioner (Appeals) to consider the processes, which are stated already on record and the outcome of such processes. Appeal is allowed by way of remand.

(Dictated & Pronounced in the open Court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

PALAK