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

REGIONAL BENCH – COURT NO. 03

CUSTOMS Appeal No. 10919 of 2022-DB

[Arising out of Order-in-Original/Appeal No MUN-CUSTM-000-476-22-23 dated 22.08.2022 passed by Commissioner of CUSTOMS-AHMEDABAD]

LEXUS PAINTS AND COATING **...Appellant**

Plot No G2 First Floor Phase-7 Industrial Area
Mohali,
Panjab-160055

VERSUS

C.C.-MUNDRA **...Respondent**

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

APPEARANCE:
Shri Ved Prakash Batra, Advocate for the Appellant
Shri. Sanjay Kumar, Superintendent (Authorized Representative) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA
HON'BLE MEMBER (TECHNICAL), MR. C.L MAHAR

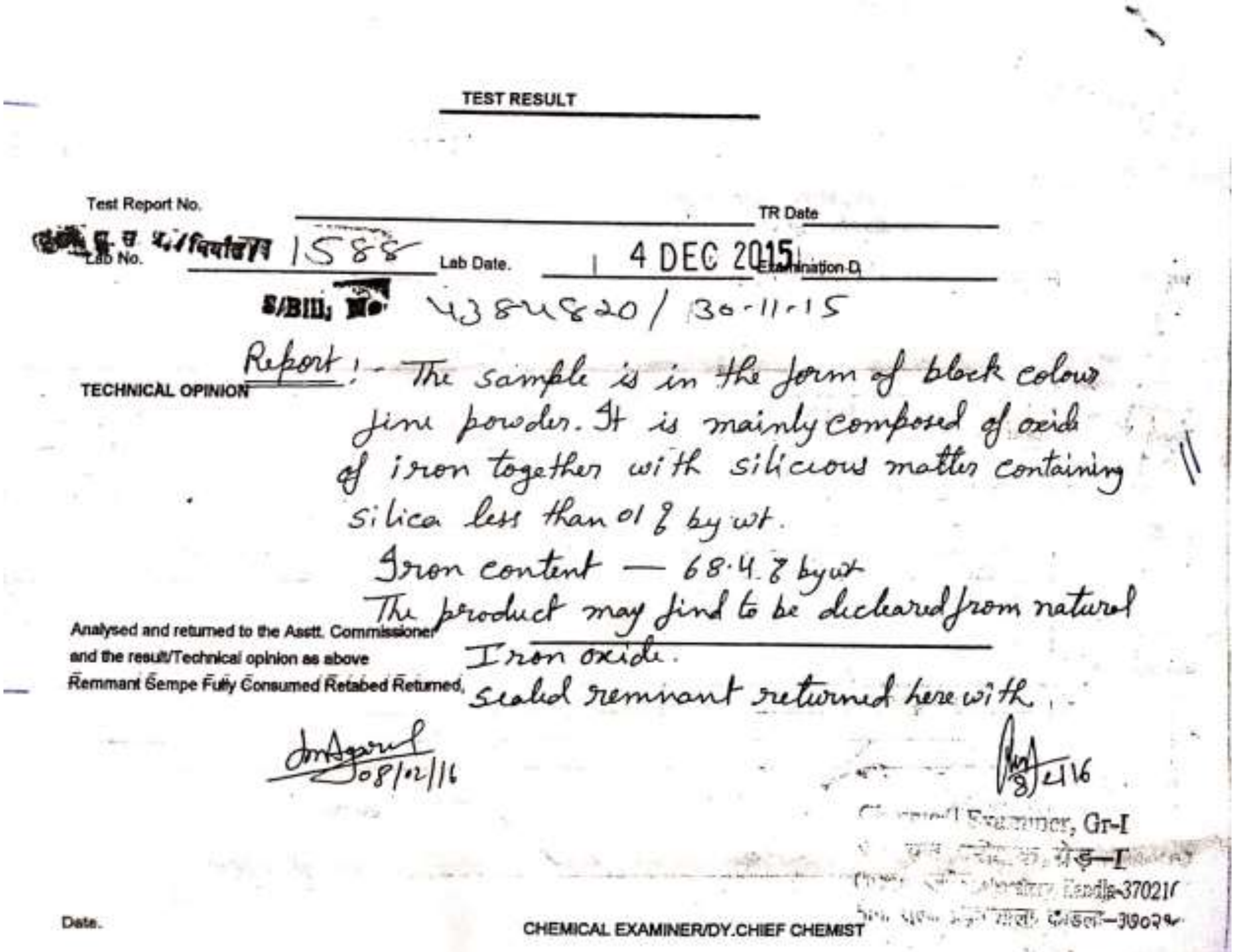
FINAL ORDER NO.A / 12191 /2023

DATE OF HEARING: 26.09.2023
DATE OF DECISION: 04.10.2023

C. L MAHAR

The brief facts of the case are that the appellants have filed two Shipping Bills No. 4384820 dated 30th November, 2015 and 4324962 dated 26th November, 2015 for export of Iron Oxide to Saudi Arabia. The appellants have classified their export product under Tariff Item 2821 1010. At the time of the clearance of export consignment, representative samples were drawn from the export consignment and sent to CRCL, Kandla for determining the nature of the export product, and to determine whether the export consignment pertains to Iron Oxide or "Iron Ore" classifiable under Customs Tariff Heading

2601 1119. The CRCL, Kandla vide its report No. 1588 dated 04th December, 2015 has reported as below:



TEST RESULT

Test Report No. TR Date

प्रयोगशाला सं./Lab No. 1588 Lab Date. 4 DEC 2015 Examination D.

S/Bill No. 4384820/30-11-15

TECHNICAL OPINION Report:- The sample is in the form of black colour fine powder. It is mainly composed of oxide of iron together with siliceous matter containing silica less than 01% by wt.

Iron content — 68.4% by wt

The product may find to be declared from natural Iron oxide.

Analysed and returned to the Asstt. Commissioner and the result/Technical opinion as above

Remmant Sempe Fully Consumed Retabed Returned. sealed remnant returned herewith.

08/02/16

Chemical Examiner, Gr-I

Kandla-370210

Date. CHEMICAL EXAMINER/DY.CHIEF CHEMIST

1.1 It can be seen from above test report that the test report holds that the consignment consist of Oxide of Iron, wherein the iron content are about 68.4% by weight. It further been mentioned with above test report that the product may find to be declared from "Natural Iron Oxide". The Custom House Laboratory, Kandla vide its letter dated 26.02.2016, in response to a letter of Deputy Commissioner of Export Customs, Mundra dated 10.02.2016, has further reported as follows:

> *"In this connection, it is to inform that the remnant of the sample has been dispatched by post. The sample is composed of Iron Oxide. The content of Iron Oxide in the sample is 97.84%."*

2. The Department on the basis of first test report entertained view that the export consignment under above mentioned two shipping bills are not of the Iron Oxide Dry Powder, but of "Iron Ore'", which is classifiable under Customs Tariff Heading 2601119, accordingly SCN dated 03.03.2016 alleging mis-declaration of the export consignment and demanding the duty @ of 30% was issued. The provisions of Section 113(d) of Customs Act, 1962 has also been invoked.

3. We have heard both the sides. We are of the view that the test report dated 14 December, 2015, and a clarification issued in the form of letter dated 12.02.2016, Wherein the remnant sample has been put for re-test and wherein the samples were found to be of Iron Oxide of 97.84%, hold without any ambiguity that the subject consignment pertains to 'Iron Oxide'. The learned Advocate has drawn our attention to the impugned order-in-original dated 21 March, 2018, para 4.3, wherein a reference has been made to a letter of Joint Director CRCL having File No. KCL/Misc-Corrs/KDL-Mundra/01/08-09/173 dated 8th January, 2018, wherein following report has been quoted:

> *"Based on the (combined) Iron content of 68.4% reported by this Laboratory, it is confirmed that the samples u/r is Iron ore/ concentrate, as the (Combined) Iron content is less than 70%, this sample cannot be considered as, Iron Oxides and hydroxide, Earth colors"*

3.1 It has been the contention of the Learned Advocate that this report of Joint Director CRCL on the basis of which the Learned Adjudicating Authority has decided that the export consignment under above mentioned two shipping bills have been mis-declared by the appellant, has never been provided to the appellant, and therefore, they have been gross violation of principle of natural justice.

3.2 After detailed perusal of the appeal papers, and the test reports, we feel that the both the test reports of the CRCL dated 04 December, 2015 as well as 12 February, 2016, which are reproduced below:

TEST RESULT

Test Report No. TR Date

Lab No. 1588 Lab Date. 4 DEC 2015 Examination D

S/Bill No. 4384820 / 30-11-15

TECHNICAL OPINION Report :- The sample is in the form of black colour fine powder. It is mainly composed of oxide of iron together with silicious matter containing silica less than 01 % by wt.

Iron content — 68.4 % by wt

The product may find to be declared from natural Iron oxide.

Analysed and returned to the Asstt. Commissioner and the result/Technical opinion as above

Remmant Sempe Fully Consumed Retabed Returned, Sealed remnant returned here with.

08/02/16

8/2/16

Chemical Examiner, Gr-I

Kandla-370210

Date. CHEMICAL EXAMINER/DY.CHIEF CHEMIST

GOVT. OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
CUSTOM HOUSE LABORATORY
KANDLA

F.No.KCL/misc-corrs/02/others-port/8-09 /2653 Date: 12.02.2016

To,
The Deputy Commissioner (Export),
Customs, MP&SEZ, Mundra.

Sir.

Subject: Test Report regarding Iron Oxide Dry Powder matter regarding.

Please refer to your letter F.No.VIII/48-588/EXP/15-16/7510 dated 10.02.2016.

In this connection, it is inform that the remnant of the sample has been dispatched by post. The sample is composed of Iron Oxide. The content of Iron Oxide in the sample is 97.84%.

It appears to be obtained from natural Iron Oxide/Ore.

3.3 It can be seen from the above test report that the consignments consisted of Iron Oxide and the only evidence on the basis of which it has been held that the subject consignments are of Iron ore/ concentrate by the Adjudicating Authority is Joint Director CRCL's letter dated 12.02.2016 which has neither been provided to the appellant nor that was existing at the time of issuing SCN. We don't take the cognigence of the Joint Deputy CRCL's letter as the Adjudicating Authority has failed to provide the same to the appellant and therefore has grossly violating the principals of natural justice following the principle of the natural justice. At the same time since the initially two reports clearly holds that export consignments are made of the Iron Oxide. We are of the opinion that charges of mis-declaration of description of subject consignments is not established.

3.4 In view of the above, we find that there is no mis-declaration in the export consignments, the classification of the export consignment under the

CTH 2821 1010 of the Customs Tariff Act is based on facts and we do not find any mis-declaration in this case.

3.5 In view of the above findings, we hold that the impugned order in original and order in appeal are without any merit, and therefore, we set aside the same.

4. The appeal is accordingly allowed.

(Pronounced in the open Court on 04.10.2023)

SOMESH ARORA
MEMBER (JUDICIAL)

C. L MAHAR
MEMBER (TECHNICAL)

PALAK