

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

REGIONAL BENCH-COURT NO. 3

Customs Appeal No. 10528 of 2022- DB

(Arising out of OIO-AHM-CUSTM-000-COM-008-22-23 dated 22/06/2022 passed by Commissioner of CUSTOMS-AHMEDABAD)

SHRUSTI CERAMICS P LTD

Plot No 37 Gidc Bh Starcity Multiplex Motipura
Himatnagar, Himatnagar- Gujarat

.....Appellant

VERSUS

C.C.-AHMEDABAD

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

.....Respondent

WITH

- (i) **Customs Appeal No. 10529 of 2022- DB (DHULABHAI M PATEL)**
- (ii) **Customs Appeal No. 10671 of 2022- DB (C.C.-AHMEDABAD)**
- (iii) **Customs Appeal No. 10672 of 2022- DB (C.C.-AHMEDABAD)**

APPEARANCE:

Shri. Rahul Gajera, Advocate for the Appellant- Assessee

Shri, A R Kanai, Superintendent (AR) for the Respondent- Revenue

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

Final Order No.12432-12435/2023

DATE OF HEARING: 06.10.2023

DATE OF DECISION: 02.11.2023

RAMESH NAIR

The issue involved in the present case is that whether the appellant imports 'Boron Ore' is eligible for exemption under Sr.No. 130 of customs notification No. 15/2017-CUS dated 30.06.2017 for the period from 26.12,2017 to 11.05.2020.

2. Shri Rahul Gajera, Learned Counsel appearing on behalf of the appellant at the outset submits that on the identical issue this Tribunal vide final order No. A/10118-10134/2023 dated 25-01-2023 remanded many appeals to the Adjudicating Authority by keeping all the issues open. He prays that the present matter also may be remanded to the Adjudicating Authority on the same line of this Tribunal's order dated 25-01-2023.

3. Shri A R Kanani, Learned Superintended (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

4. On careful consideration of the submission made by both the sides and perusal of the record, we find that the eligibility of the exemption on import of 'Boron Ore' was in dispute in many cases and a bunch of appeals have been disposed of by this Tribunal in the case of Pradip Kumar P Patel & Ors. vide common final order No. A/10118-10134/2023 dated 25.01.2023, wherein the Tribunal has passed following order remanding the matter to the Adjudicating Authority.

"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."

Since, in the above decision of this Tribunal identical issue that of in the present appeal is involved, it is in the interest of justice that the present matter may also be remanded and to be decided by passing a de-novo order by the Adjudicating Authority considering the observation made in the above decision.

5. Accordingly, the impugned order is set aside. Appeals are allowed by way of remand to the Adjudicating Authority in the above terms.

(Pronounced in the open court on 02.11.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha