**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**BANGALORE**

REGIONAL BENCH - COURT NO. 2

**Central Excise Appeal No. 20939 of 2018**

(Arising out of Order-in-Appeal No. BEL-EXCUS-000-APP-MSC-367-2017-18 dated 26.03.2018 passed by the Commissioner of Central Tax (Appeals) Belgaum)

**MSPL Limited**
Baldota Enclave, Abheraj, Baldota Road,
Hospet, Karnataka – 583203 **........Appellant**

**VERSUS**

**Commissioner of Central Tax, Bangalore**
No.71, Club Road, Belgaum,
Karnataka – 590001. **............Respondent**

**Appearance:**

Mr. M.S. Nagaraja, Advocate for the Appellant
Shri Vikalp Jain, Authorised Representative (AR) for the Revenue

**CORAM:**

**Hon'ble Mr. P.A. Augustian, Member (Judicial)**
**Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)**

**Final Order No. 22188 /2025**

Date of Hearing: 15.09.2025
Date of Decision: 15.09.2025

**PER: P. A. AUGUSTIAN**

This appeal is filed against Order-in-Appeal No. BEL-EXCUS-000-APP-MSC-367-2017-18 dated 326.03.2018 passed by the Commissioner of Central Tax (Appeals) Belgaum.

2. The issue in the present appeal is regarding refund of amount deposited under Rule 6 of Cenvat Credit Rules, 2004.

3. The brief facts are the Appellant is manufacturing 'Iron Ore Pellets' and was availing CENVAT credit of 'inputs' and 'inputs services' under CENVAT Credit Rules, 2004 and working under self-assessment procedure. 'Iron ore fines' were used for manufacture of 'iron ore pellets' and are cleared on payment of duty. On 30.01.2016, Appellant filed a refund claim of the duty paid @ 6% value on the 'iron ore lumps' cleared from their factory on the ground that they had procured 'iron ore ROM (Run of Mine)' which compromises 'fines' and 'lumps' classifiable under Central Excise Tariff Heading (CETH) 2601, attracting 'Nil' rate of duty under Notification No. 12/2012-CE dated 17.03.2012. However a show cause notice (SCN) dated 25.05.2016 was issued on the ground that Appellant is not eligible for refund and thereafter the Adjudication authority as per the order dated 24.10.2016 rejected the refund application. Aggrieved by said order, an appeal was filed before the Commissioner (Appeals) and Commissioner (Appeals) as per the impugned order dated 26.03.2018 upheld the Order-in-Original dated 24.10.2016 rejecting the refund claim. Aggrieved by the said order, present appeal is filed.

4. When the appeal came up for hearing, the Learned Counsel draws our attention to the Order-in-Original dated 24.10.2016 issued by the Adjudicating authority where the Adjudicating authority held that; the 'Iron Ore Fines' are used by the appellant in their pellet plant and 'Iron Ore Lumps' are sold to the outside steel units. Since clearance of 'Iron Ore Lumps' amount to clearance of inputs as such, there are no provision of law to reverse CENVAT Credit availed on input services used in clearance of 'inputs' as such. However, when an appeal was filed, Appellate authority held that; "Iron Ore Lumps are emerged during the manufacturing of Iron Ore pellets and Iron Ore Lumps are not waste product. Appellant has not disputed this. After going through the process, I find that the separation of iron ore lumps from iron ore fines is done through sieving. At a time two products viz. Iron Ore Lumps and iron ore fines emerges through a single process. In view of this, the activity undertaken by the appellant is manufacturing. Accordingly,

appellant is liable to pay an amount of 6% of the value of "iron ore lumps".

5. Learned Counsel submits that the above finding is against the Circular issued by the Board. As per the Circular No. 332/1/2012-TRU dated 17.02.2012, it is clarified that levy of excise duty is attracted only in cases where the product meets the definition of concentrate as per HSN Note. The Circular is reproduced below:

> *"Subject: Dutiability of "iron ore" and "iron ore concentrates"- Clarification regarding.*
>
> *A reference has been received from Bhubaneswar Zone seeking clarification on the issue of whether "Iron ore lumps and fines" are dutiable as "concentrates" when subjected to crushing, screening, sizing or washing etc.*
>
> *2. In Budget 2011, a Note was inserted in Chapter 26 of the First Schedule to the Central Excise Tariff to deem the process of converting "Ores" into "Concentrates" as a process amounting to manufacture. Both ores and concentrates are classifiable under Chapter 26 and while the term 'Ore' is defined in Note 2 of the said chapter, the term 'concentrate' is not. HSN Explanatory Note spell out the scope of the term "Concentrate" as under:*
>
> > *"For the purposes of Headings 2601-2617, the term 'concentrates' applies to ores which have had part or all of the foreign matter removed by special treatments either because such foreign matter may hamper subsequent metallurgical operations or with a view to economical transport."*
>
> *From the above definition, it is clear that removal of part or all of foreign material is envisaged for conversion of ores into concentrates. Ministry of Mines have clarified that no special treatment is involved in the crushing and screening of ore and the end-product can be termed as a concentrate only when the grade of ore is sufficiently improved through beneficiation. Federation of Indian Mineral Industries have also pointed out that several*

*processes (in addition to crushing and screening) such as milling, hydraulic separation, magnetic separation, floatation & Concentrate thickening have to be undertaken for ores to be converted into concentrate.*

*3. Hence, it is clarified that the levy of excise duty is attracted only in cases where the product meets the definition of concentrate as per HSN Notes, that is, 'ores which have had part or all of the foreign matter removed by special treatments either because such foreign matter may hamper subsequent metallurgical operations or with a view to economical transport.*

*4. The above position may be brought to the notice of Commissioners under your charge so that pending disputes, if any, may be decided accordingly."*

6. Learned Counsel further submits that the issue is no more *res integra* and the issue is covered by the judgment of the Hon'ble Supreme Court in the matter of **Union of India Vs. M/s. DSCL Sugar Ltd -[2015 (322) E.L.T 769 (SC)]** wherein it is held that;

*'6. The aforesaid Judgment was pronounced by this Court related to the period before 2008. In the year 2008 there was an amendment in Section 2(d) as well as in Section 2(f) of the Act which defines 'excisable goods' and 'manufacture' respectively, Section 2(d) with the said amendment reads as under:*

> *Section 2(d)-"excisable goods" means goods specified in [The First Schedule and the Second Schedule] to the Central Excise Tariff Act, 1985 (5 of 1986) as being subject to a duty of excise and includes salt;*

*Explanation for the purposes of this clause, "goods" includes any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable."*

*...................*
*...................*

*10. In the present case it could not be pointed out as to whether any process in respect of Bagasse has been specified either in the Section or in the Chapter note. In the absence thereof this deeming provision cannot be attracted. Otherwise, it is not in dispute that Bagasse is only an agricultural waste and residue, which itself is not the result of any process. Therefore, it cannot be treated as falling within the definition of Section 2(f) of the Act and the absence of manufacture, there cannot be any excise duty.*

*11. Since it is not a manufacture, obviously Rule 6 of the Cenvat Rules, 2004, shall have no application as rightly held by the High Court."*

7. Further the issue is also covered by the decision of the Tribunal in the matter of **CC, Raipur Vs. Seleno Steels Ltd (2013 (287) E.L.T 93 (Tri.-Del.)** wherein it is held that:-

*"8. After going through the reasoning adopted by Commissioner (Appeals) and the grounds raised by the Revenue, I find that it is not disputed that the Iron Ore Fines emerge during the process--- of Iron Ore, as a waste material. They are nothing but smaller pieces of Iron Ore, which are not usable for further manufacture of Sponge Iron Ore. The same cannot be held to be a product having emerged as a result of manufacture. It is well settled law that the criteria of manufacture is required to be satisfied first for holding any product as excisable. If no manufacturing activity has taken place, mere mention of the goods in the tariff will not make the said goods as excisable goods. It is not the Revenue's case that by any artificial definition, the screening of Iron Ore has been held to be process of manufacture.*

*9. In view of the above discussion, I do not find any infirmity in the order passed by Commissioner (Appeals). Accordingly the impugned order in the appeal is upheld and revenues appeal is rejected."*

8. Further this Tribunal in the matter of **CC, Visakhapatnam Vs. Highgrade Pallet Ltd- 2010 (249) E.L.T 266 (Tri. Bang)** considered the issue and held that:-

> *"5. We have gone through the facts of the case carefully. In this case, the iron ore fines have been subjected to the process of sieving and grinding. There is force in the contention of the learned advocate that no process of manufacture is involved in getting the iron ore chips. During the process of sieving, particles of dimension larger than 10 mm are discarded. In so far as the manufacture of pellet is concerned, these particles have to be considered as waste. Therefore, they cannot be treated as final products manufactured out of cenvat inputs. The application of Rule 6 of the Cenvat Credit Rules in demanding 8% amount does not appear to be correct. In our view, the impugned order of the Commissioner (A) allowing the respondents appeal is legal and proper. We do not find any merit in the grounds of appeal of the Revenue. Hence, the same is dismissed."*

9. As regards payment of interest, Learned Counsel relied on the judgment of Hon'ble Supreme Court in the matter of **Ranbaxy Laboratories Ltd Vs. Union of India – 2011 (273) ELT 3 (SC);** where it is held that "thus only interpretation of Section 11B that can be arrived at is that interest under said section became payable on the expiry of a period of three months from the date of receipt of application under sub section 1 of Section 11B of the Act and that the said exception does not have any bearing or connection with date from which interest under Section 11B of the Act became payable".

10. Learned Authorized Representative (AR) reiterated the finding in the impugned order and submits that 'Iron Ore Lumps' falling under Central Excise Tariff Heading (CETH) 2601 are exempted from payment of Central Excise Duty under Sl.No.56 of Notification No.12/2012-CE dated 17.03.2012. However, as per Rule 6 (1) of Cenvat Credit Rules, 2004, the Cenvat Credit shall not be allowed on such quantity of 'inputs' and on 'input services' which are used in the manufacture of exempted

goods or for provision of exempted services. However as per Rule 6 (2), ibid, where manufacturer avails of Cenvat credit in respect of any inputs and input services and manufactures final products which are chargeable to duty as well as exempted goods, then, the manufacturer shall maintain separate accounts for the receipt, consumption and inventory of input and input services meant for using in the manufacture of dutiable final products. The quantity of input used and take Cenvat Credit only on that quantity of input and input services which are intended for use in the manufacture of dutiable goods. As per Rule 6(3) ibid the manufacturer of goods opting not to maintain separate account, either has to pay an amount equal to 6% of the value of the exempted goods or pay an amount equal to the Cenvat Credit attributable to inputs and input services used in or in relation to manufacture of exempted goods. In the Budget 2008, the definition of "excisable goods" in clause (d) of Section 2 of the Central Excise Act, 1944 was amended by adding an explanation that for the purposes of this clause, "goods" include any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable. Further CBEC, vide Circular No.904/24/09-CX. dated 28.10.2009 has clarified that with this amendment in Section 2(d), such products termed as waste, residue or refuse which arise during the course of manufacture and are capable of being sold for consideration would be excisable goods and chargeable to payment of excise duty. It has been further clarified that in case the rate of duty in respect of such products is 'nil' in the tariff or they are exempt from duty in terms of any exemption notification, and if Cenvat Credit has been taken on the inputs and input services which are used for manufacture of dutiable and exempted goods, then in terms of Rule 6 of Cenvat Credit Rules, 2004, the assessee is required to reverse the proportionate credit or pay 6% amount; Further, Rule 6 of CENVAT Credit Rules, 2004 has been amended with effect from 01.03.2015 by Notification No. 06/2015-CE (NT) dated 01.03.2015, inserting an explanation 1, as per which, for the purpose of Rule 6, 'exempted goods' or 'final products' as defined in clauses (d) and (h) of Rule 2 shall include non-excisable goods cleared for a consideration from the factory. As per explanation 2 ibid 'value of non-excisable goods for the purposes of this rule, shall be the invoice value and where such invoice value is not available, such value shall be determined by using reasonable means consistent with the principles of valuation contained in the Excise Act and the Rules made there under. Thereby, it is apparent that all the goods produced /cleared for consideration are comprehensively covered under definitions of 'excisable goods' and 'final products'. In appellant’s case, Iron Ore ROM (Run of Mine) brought into appellant factory is subjected to screening. The screening is done by SandVic Screening Machine installed in the appellant's pellet plant. The 'Iron Ore ROM' is fed into the screening machine using a hopper. The screening happens at two stages in a vibrating screen mounted with a suitable screen mesh and is driven by a motor. The SandVic screening machine segregates the ‘Iron Ore ROM’ into ‘Iron Ore fines’ and ‘Iron Ore lumps’. The iron ore fines are used by the appellant in pellet plant and ‘Iron Ore lumps’ are sold to the outside steel units. Accordingly, Adjudication Authority rightly rejected the refund claim.

11. Heard both sides and perused the records.

12. We find that in this case the applicant has filed a refund claim for amount paid at 6% of the value of the 'iron ore lumps' which have been physically segregated from the 'iron ore' Run of Mine (ROM) by the process of sieving. We find that the process of sieving of the 'iron ore Run of Mine' (ROM) and segregation into 'iron ore fines' and 'iron ore lumps' physically do not amount to manufacture. Further as per the Board's Circular No. 332/1/2012-TRU dated 17.02.2012 the 'iron ore Run of Mine' (ROM) is not converted into concentrate by the process of beneficiation, therefore mere physical sieving of the 'iron ore Run of Mine' (ROM) and segregation into 'iron ore fines' and 'iron ore lumps' does not amount to manufacture. Therefore, the findings of the adjudicating authority as confirmed by the appellate authority that two products namely 'iron ore fines'' and iron ore lumps' have emerged during the process of sieving and therefore it amounts to manufacture, and since 'iron ore lumps' are exempted from excise duty the appellant

is liable to pay an amount equal to 6% of the value of the exempted goods under Rule 6 of Cenvat Credit Rules, 2004 on clearances of 'iron ore lumps' in the absence of maintenance of separate accounts for the dutiable and exempted goods is untenable. We find that in this case the authorities below have not discussed in their respective orders with regard to the conditions prescribed under section 11B of the Central Excise Act, 1944 in respect of with claim of refund of the amount paid by the appellant. Therefore, it is understood that the authorities below have examined the refund claim with respect to the provisions of section 11B of Central Excise Act, 1944.

13. In view of the above discussion, following the decision of this Tribunal in the matter of **High grade Pallet Ltd (supra),** Circular issued by the Board dated 17.02.2012 and the ratio of the judgment of the Hon'ble Supreme Court in the matter of **M/s. DSCL Sugar Ltd., (supra),** the Appellant is eligible for refund of duty paid at the rate of 6% of the value of 'Iron Ore lumps' cleared by the appellant subject to following the conditions as stipulated under section 11B of Central Excise Act, 1944. As regards payment of interest, Adjudication Authority is directed to assess the interest as per the statutory provision and by following the ratio of the judgment of the Hon'ble Supreme Court in the matter of **Ranbaxy Laboratories Ltd (supra).**

14. Accordingly, the impugned order is set aside and the Appeal is allowed in the above terms.

*(Operative portion of the order was pronounced in open court on conclusion of hearing.)*

**(P. A. Augustian)**
**Member (Judicial)**

**(Pullela Nageswara Rao)**
**Member (Technical)**

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