CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 22223 of 2015

(Arising out of Order-in-Appeal No. COC-CUSTM-000-APP-96/2015-16 dated 30.07.2015 passed by the Commissioner of Customs (Appeals), Cochin.)

M/s. Saint-Gobain India Pvt. Ltd.
(Formerly Known as M/s. S.E.P.R. Refractories India Ltd.)
P.B.No.1, Kanjikode West,
Palakkad – 678 623.

Appellant(s)

VERSUS

The Commissioner of Customs,
Customs House,
Cochin – 682 009.

Respondent(s)

With

Customs Appeal No. 21295 of 2016

(Arising out of Order-in-Appeal No. COC-CUSTM-000-APP-27/2016-17 dated 13.05.2016 passed by the Commissioner of Customs (Appeals), Cochin.)

M/s. Saint-Gobain India Pvt. Ltd.
(Formerly Known as M/s. S.E.P.R. Refractories India Ltd.)
P.B.No.1, Kanjikode West,
Palakkad – 678 623.

Appellant(s)

VERSUS

The Commissioner of Customs,
Customs House,
Cochin – 682 009.

Respondent(s)

And

Customs Appeal No. 21851 of 2016

(Arising out of Order-in-Appeal No. 108/2016 dated 26.09.2016 passed by the Commissioner of Customs (Appeals), Cochin.)

M/s. Saint-Gobain India Pvt. Ltd.,
(Formerly Known as M/s. S.E.P.R. Refractories India Ltd.)
P.B.No.1, Kanjikode West,
Palakkad – 678 623.

Appellant(s)

VERSUS

The Commissioner of Customs,
Customs House,
Cochin – 682 009.

Respondent(s)

APPEARANCE:

Mr. Anil Kumar B, Advocate for the Appellant

Mr. M. Sreekanth, Assistant Commissioner (AR) for the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS R BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20653 - 20655 /2026

DATE OF HEARING: 17.10.2025

DATE OF DECISION: 13.04.2026

PER : D.M. MISRA

These three appeals are filed against respective Orders-in-Appeal, tabulated below, passed by the Commissioner of Customs (Appeals), Cochin since involve common issues are taken up together for hearing and disposal.

Appeal No.	**C/22223/2015**	**C/21295/2016**	**C/21851/2016**
Date of Show Cause Notice/BOE	23.03.2012 **DRI-SCN**	Bills of Entry – 4 **Nos.**	Bills of Entry – 2 Nos.
Period involved	March 2011-January 2012	August 2010 February, March, September 2011	Dec 2012 and July 2015
Date of Order in Original	31.10.2013/ 05.11.2013	31.07.2015/ 04.08.2015	19.02.2016/ 22.02.2016
Date of Order in Appeal	No.96/2015 30.07.2015/ 31.07.2015	No.27/2015 13.05.2015/ 17.05.2015	No.108/2016 23.09.2016/ 26.09.2016
Classification claimed by the Assessee	2615 10 00	2615 10 00	2615 10 00
Department's Classification	2615 10 00	2615 10 00	2615 10 00
Differential amount of duty demanded	Rs.70,03,648/-	Rs.26,29,412/-	Rs.23,30,498/-
Penalty under Section 11(a) of the Customs Act, 1962.	Rs.15,000/-	NIL	NIL

2. Briefly stated the facts of the case are that on the basis of intelligence, investigation was initiated against the appellant by the DRI by recording statements and conducting test on the sample of imported goods viz. 'Zircon Sand' alleging that the Appellant had wrongly claimed/availed benefit of Notification No.4/2006-CE dated 01.03.2006 classifiable under CTH 2615 10 00 as 'Ores'. On conclusion of the investigation, show-cause notice was issued on 23.03.2012 proposing recovery of the differential Additional Customs duty (CVD) with interest and proposal for penalty. Assessment of subsequent import of 'Zircon Sand' claiming the benefit of said Notification 04/2006 CE assessments were made provisional and on adjudication, the benefit of the said Notification was denied and differential duty had been confirmed with interest.

3. At the outset, the learned advocate for the appellant has submitted that on Chemical Examination of the sample drawn by the DRI, it is mentioned that the imported goods be considered as 'Concentrated Zirconium Ore'. Based on the Chemical Examiner's Report, show-cause notice was issued to them alleging that the imported goods viz., Zircon Sand where percentage of Zirconium Oxide (ZrO_2) is 66.5% and Silicon Dioxide (SiO_2) is 32.8%; the same are 'concentrate' and not 'ores' hence benefit of Notification was denied. He has submitted that the issue has been decided in favour of the appellant in the following cases:

- Endeka Ceramics India Pvt. Ltd. vs. CC, Chennai: 2021 (10) TMI 251 – CESTAT Chennai
- Malu Electrodes Pvt. Ltd. vs. CC, Nhava Sheva: 2018 (364) ELT 1023 (Tri.-Mum.)
- Arihat Ceramics vs. CC, Ahmedabad: 2013 (4) TMI 362 – CESTAT Ahmedabad
- Yeyo International vs. CC, Ahmedabad: 2013 (12) TMI 94 – CESTAT Ahmedabad
- Astron International vs. CC, Ahmedabad: 2013 (11) TMI 698 – CESTAT Ahmedabad

- Astron International vs. CC, Ahmedabad: 2013 (11) TMI 792 – CESTAT Ahmedabad
- Classic Microtech Pvt. Ltd. vs. CC, Ahmedabad: 2012 (285) ELT 418 (Tri.-Ahmd.)

4. Further referring to the HSN Explanatory Notes, he has submitted that Niobium, Tantalum, Vanadium or Ziroconium Ores and Concentrates fall under Customs Tariff Heading 2615. Further it is contended that what is covered under the Tariff Sub-Heading 2615 10 00 is Zirconium ores and concentrates; Zirconium has the chemical symbol as Zr with atomic number of 40 and is a metal. What the tariff entry intents to cover is the ores of Zirconium and concentrates of Zirconium per se. Zircon on the other hand is Zirconium Silicate with the chemical symbol $ZrSiO_4$. Therefore, from the explanation in the HSN Explanatory Notes, Zirconium Oxide, Zircon Sands and Zirconium Silicates all qualifies as ores. Only the Zirconium per se would fall within the ambit of concentrate. Further, he has submitted that they have requested for cross-examination of the Chemical Examiner or for retest in any other Government Laboratory, which was not granted; therefore, the impugned order is not maintainable.

5. Per contra, the learned Authorised Representative (AR) for the Revenue has submitted that the appellant had imported Zircon Sand which is concentrate and classified the same as ores to avail wrongly the benefit of Notification No.4/2006-CE dated 01.03.2006. He submits that both concentrate and ores fall under the same Tariff Heading. The DRI officers had noticed the mis-declaration of the impugned goods i.e., zircon sand and found that zircon sand was not an ore but was concentrate; hence, the benefit of Notification No.4/2006-CE dated 01.03.2006 is not admissible. Further verification of the documents and statements obtained during the course of investigation, it was noticed that imported zircon sand was processed from ore and impurities were removed, the Chemical

Examiner test of CRCL, Vadodara confirmed the contents were Zirconium Oxide (ZrO_2) is 64.6% by weight and Zircon Silicon Dioxide ($ZrSiO_2$) is 96.1% by weight and the imported item was Zircon Concentrate. Further, he has submitted that manufacturing process given in the official website of M/s. Iluka Resources, Australia, one of the world's major producers of Zircon makes it clear that the mineral sands are concentrated by means of wet and dry concentration processes (special processes) before they are marketed. Further, he has submitted that reliance placed in the judgment in the case of *M/s. Classic Microtech: 2012 (285) ELT 418 (Tri.-Ahmedabad)* by the Appellant is misplaced as the same is not applicable to the facts of the present case; the goods imported in the said case was granular sand of zircon ore, whereas in the present case, it is zircon sand.

6. Further, he has submitted that the import made through Chennai Port during the period March 2011 to October 2011, the exemption was not claimed by the appellant. Further, it is submitted that Board's Circular dated 17.02.2012 and No.09/2012-Cus. issued in File No.528/11/2012-STO (TU) dated 23.03.2012 had clearly stated distinguishing ores from concentrate that "in the event 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, then the goods are liable to be classified as concentrates.' He submits that in the present case, it is not disputed that certain special processes has been carried out on the Ores and the purity has reached to 96.1% and the same is confirmed as 'concentrate'. In support, they have referred to the judgment in the case of **M/s. Indian Rare Earths Ltd. vs. CCE & ST, BBSR-1: 2016 (4) TMI 601 CESTAT Kolkata**. Further, he has submitted that since the issue

relates to availing the benefit of exemption Notification, it has to be strictly interpreted and in case of ambiguity in the exemption Notification, the benefit cannot be extended to the tax payer as held by the Hon'ble Supreme Court in the case of **Commissioner of Customs vs. Dilip Kumar and Company & Others: 2018 (7) TMI 1826 (SC-LB)**. On the issue of imposition of penalty, he has submitted that since they have suppressed the fact with intention to evade customs duty, therefore, imposition of penalty under Section 112(a) of the Customs Act, 1962 is justified.

7. Heard both sides and perused the records.

8. The principal question involved in the present case for consideration is: whether the imported goods declared as 'Zircon Sand' classified under CTH 2615 15 00 be considered as 'ore' as claimed by the appellant or 'concentrate' as alleged by the Revenue so as to ascertain the admissibility of the benefit of Additional Duty of Customs (CVD) under Notification No.4/2006-CE dated 01.03.2006.

9. The relevant Notification 04/2006 CE dated 01.3.2006 is reproduced as below:

Notification No.4/2006-CE dated 01.03.2006

Exemption and effective rate of duty for specified goods of Chapters 25 to 49

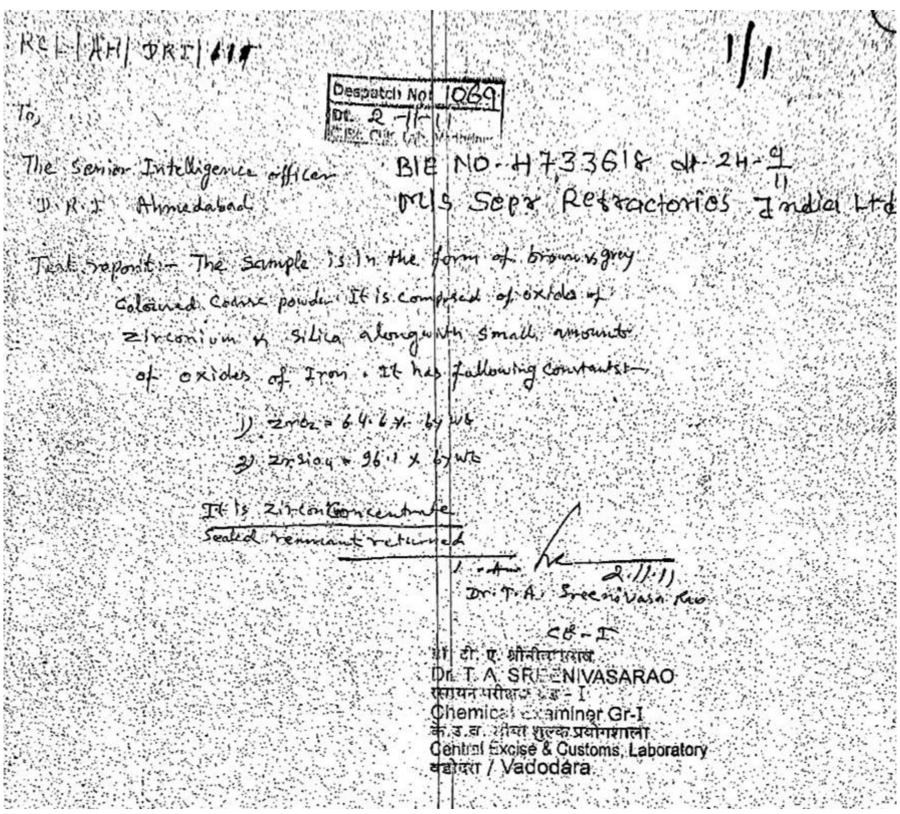
In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts excisable goods of the description specified in column (3) of the Table below 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.

Table

S. No.	Chapter or heading or sub-heading or tariff item of the First Schedule	Description of excisable goods	Rate	Condition No
4.	2601 to 2617	Ores	Nil	—

10. Undisputed facts are that sample against one of the Bill of Entry No.4733618 dated 24.09.2011 was drawn and sent for chemical analysis. The Chemical Examiner's report is placed below:


RCL/AH/DRI/411

Despatch No. 1069
Dt. 2-11-11

1/1

To,
The Senior Intelligence officer
D.R.I. Ahmedabad

B/E NO-4733618 dt-24-9-11
M/s Sepr Refractories India Ltd

Test report:- The sample is in the form of brownish grey coloured coarse powder. It is composed of oxide of zirconium & silica alongwith small amounts of oxides of Iron. It has following contents:-

1) ZrO_2 = 64.6% by wt
2) $ZrSiO_4$ = 96.1% by wt

It is Zircon Concentrate
Sealed remnant returned

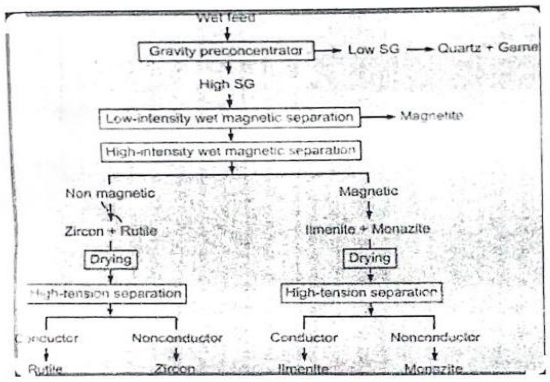
2.11.11
Dr. T.A. Sreenivasa Rao
CE-I

डॉ. टी. ए. श्रीनिवासराव
Dr. T. A. SREENIVASARAO
रसायन परीक्षक ग्रेड - I
Chemical Examiner Gr-I
के.उ.व. सीमा शुल्क प्रयोगशाला
Central Excise & Customs, Laboratory
वडोदरा / Vadodara

11. The appellant's claim that zircon sand imported by them continues to be ore even after the following processes has been carried out by the exporter.

Process of Getting Zircon Sand (121)

The ore with HMC – Heavy Mineral Concentrates are fed into gravity pre-concentrator and the minerals are separate into High Specifc Gravity elements (Zircon, Rutile, Monozite & Iluminiate) and Low Specific Gravity elements such as Quartz, Silica etc.

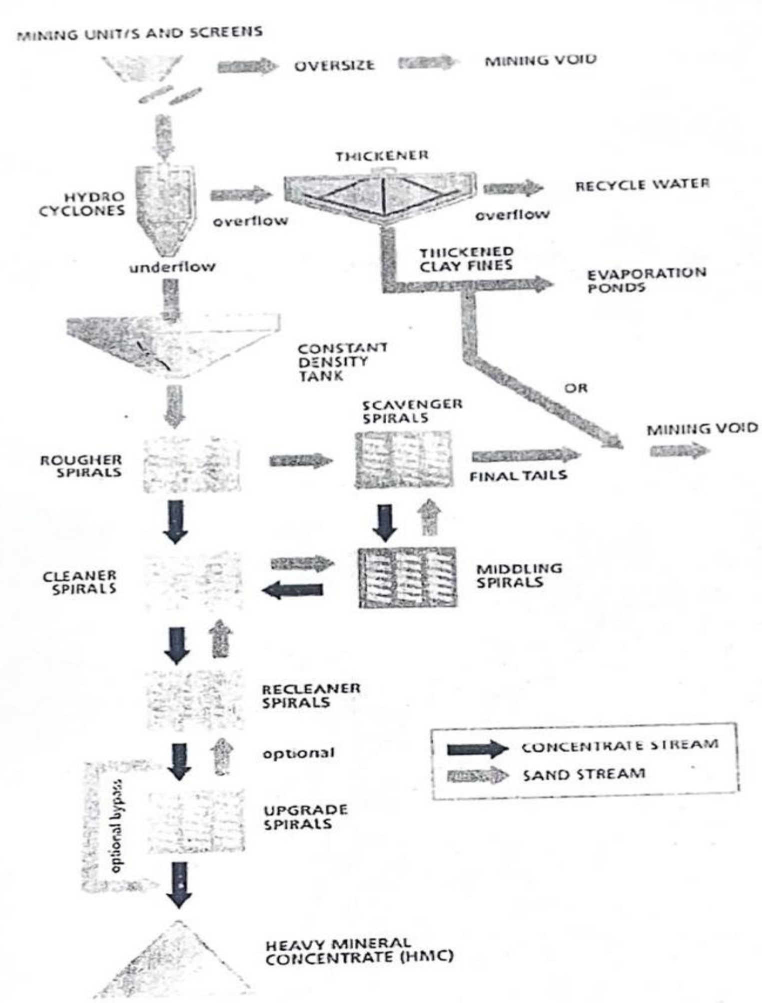


Then as explained in the above process the Zircon + Rutile being a Non Magnetic material it is separated via wet magnetic separation methodology.

Further, the Zircon is Non-Conducting in nature is separated under High Tension separation method. The Zircon Sand which is separated is packed and supplied.

When we check the Chemical composition of Zircon sand its container ~ 65 to 66% ZrO_2 (+HfO_2) & SiO_2 ~ 32 to 33% and remaining are the impurities.

HMC Process Chart



12. There is no change in classification of the zircon ores and concentrates. Both 'Ore' and 'concentrate' fall under the same Tariff Heading which reads as below:

Tariff Item		Description of goods	Unit	Rate of duty
2615		Niobium, tantalum, vanadium or zirconium ores and concentrates		
2615 10 00	-	Zirconium ores and concentrates	Kg.	5%
2615 90	-	Other:		
2615 90 10	---	Vanadium ores and concentrates	Kg.	5%
2615 90 20	---	Niobium or tantalum ores and concentrates	Kg.	5%

13. The dispute centres around the meaning of 'ores' and 'concentrates' for the purpose of the applicability of Notification No.04/2006 CE dt.01.3.2006.

14. The meaning of 'ores' provided under Note 2 to Chapter 26 reads as follows:

> "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."

15. Note 4 which has been introduced with effect from 01.03.2011 reads as follows:

> "4. In relation to products of this chapter, the process of converting ores into concentrates shall amount to "manufacture"."

16. The meaning of concentrate has not been provided under Chapter 26. Therefore, to understand its scope it is essential to

refer to the HSN Explanatory Notes, relevant to Chapter 26 and Heading 2615.

CHAPTER 26

ORES, SLAG AND ASH

Chapter Notes.

GENERAL

Headings 26.01 to 26.17 are limited to metallic ores and concentrates which:

(A) Are of mineralogical species actually used in the metallurgical industry for the extraction of the metals of Section XIV or XV, of mercury or of the metals of heading 28.44, even if they are intended for non-metallurgical purposes, and

(B) Have not been submitted to processes not normal to the metallurgical industry.

The term "ores" applies to metalliferous minerals associated with the substances in which they occur and with which they are extracted from the mine; it also applies to native metals in their gangue (e.g., metalliferous sands).

Ores are seldom marketed before "preparation" for subsequent metallurgical operations. The most important preparatory processes are those aimed at concentrating the ores.

For the purposes of headings 26.01 to 26.17, 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 might hamper subsequent metallurgical operations or with a view to economical transport.

Processes to which products of headings 26.01 to 26.17 may have been submitted include physical, physico-chemical or chemical operations, provided they are normal to the preparation of the ores for the extraction of metal. With the exception of changes resulting from calcination, roasting or firing (with or without agglomeration), such operations must not alter the chemical composition of the basic compound which furnishes the desired metal.

The physical or physico-chemical operations include crushing, grinding, magnetic separation, gravimetric separation, flotation, screening, grading, agglomeration of powders (e.g., by sintering or pelleting) into grains, balls or briquettes (whether or not with the addition of small quantities of binders), drying, calcination, roasting to oxidise, reduce or magnetise the ore, etc. (but not roasting for purposes of sulphating, chloridating, etc.).

> The chemical processes are aimed at eliminating the unwanted matter (e.g., dissolution).
>
> Concentrates of ores obtained by treatments, other than calcining or roasting, which alter the chemical composition or obtained by repeated physical changes (fractional crystallisation, sublimation, etc.), even if there has been no change in the crystallographic structure of the basic ore ore are excluded (generally Chapter 28). Also excluded are more or less pure products chemical composition of the basic ore.

17. A plain reading of the above Explanatory Notes, it is clear that the term 'concentrate' would apply to such ores which have had part or all of the foreign matter removed by special treatments either because such foreign matter would hamper when ore is subjected to subsequent metallurgical operations or for the purpose of economical transport. Further it also explains which of the processes are applied to ore so as to make it concentrate; it includes physical or physico-chemical or metallurgical operations which are normal to the preparations of the ores for extraction of the metal. It is also stated that with exception of changes resulting from calcination, roasting or firing (with or without agglomeration), such operations must not alter the chemical composition of the basic compound which furnishes the desired metal. Further, what the physical or physcio-chemical operations comprise of has been explained stating that these include crushing, grinding, magnetic separation, gravimetric separation, floatation, screening, grading, agglomeration of powders, etc. Similarly, the chemical process aimed at eliminating the unwanted matter is also considered to convert the ore into concentrate. Therefore, it can safely be inferred that that ores which are extracted from mines when subjected to the aforesaid processes becomes 'concentrate'.

18. Further, we find that since both ores and concentrates are falling under the same Tariff Heading of the Central Excise Tariff Act,1985, Note 4 to Chapter 26 has been added providing an artificial definition of 'manufacture', that is, converting 'ores' into

'concentrate' as amounting to manufacture. The artificial/fictional meaning of 'manufacture' has to be given due weightage, being statutorily defined in contrast to the common parlance test where such processes cannot be held to result into 'manufacture' within the scope of the definition of manufacture prescribed under Section 2(f) of CEA,1944. This principle has been laid down in the judgment of the Hon'ble Supreme Court in **Shyam Oil Cake Ltd. vs. Collector of Central Excise, Jaipur: 2004 (174) ELT 145 (SC)**. Their Lordships held as:

> **"16.** Thus, the amended definition enlarges the scope of manufacture by roping in processes which may or may not strictly amount to manufacture provided those processes are specified in the Section or Chapter notes of the Tariff Schedule as amounting to manufacture. It is clear that the Legislature realised that it was not possible to put in an exhaustive list of various processes but that some methodology was required for declaring that a particular process amounted to manufacture. The language of the amended Section 2(f) indicates that what is required is not just specification of the goods but a specification of the process and a declaration that the same amounts to manufacture. Of course, the specification must be in relation to any goods."

The said view was later endorsed by the Hon'ble Apex Court in its subsequent decision in the case of **Commissioner of C. Excise, Bangalore-II vs. Osnar Chemical Pvt. Ltd.: 2012 (276) ELT 162 (SC)**.

19. Therefore, to determine whether an ore becomes concentrate as laid down in the HSN Note, it is the process which applied to 'ore' is relevant, that is, process with an objective to remove part or whole of the impurities contained in the ore extracted from the mines so as to make it fit for further metallurgical operations or make it viable for economical transport. Nowhere, under the said explanatory note, the composition of the metal in the ores has been prescribed as the

test to ascertain whether ores after being subjected to physical or physico-chemical or metallurgical operations would determine the resultant as concentrate. This is the distinguishing factor between the ore and the concentrate in the light of the said Chapter Note and reading in the context of the exemption Notification No.4/2006-CE dated 01.03.2006.

20. The Circular issued by the CBEC in the context of levy of excise duty on the introduction of Chapter Note 4, adopted the meaning of concentrate mentioned under the HSN Explanatory Notes. The said Circular reads as below:

Iron ore and iron ore concentrates

Instructions F.No. 332/1/2012-TRU, dated 17-2-2012

Government of India
Ministry of Finance (Department of Revenue)
Central Board of Excise & Customs, New Delhi

Subject : Dutiability of "iron ore" and "iron ore concentrates" - Clarification regarding.

A reference has been received from Bhuwaneswar 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.

21. Further, Circular No.9/2012-Cus. dated 23.03.2012 was issued by the Board on the applicability of the said exemption Notification No.4/2006-CE dated 01.03.2006 on imported ore concentrates reads as follows:

Import of Ore Concentrates — Applicability of exemption Notification No. 4/2006-C.E. — Clarifications

Circular No. 9/2012-Cus., dated 23-3-2012
F.No. 528/11/2012-STO(TU)

Government of India
Ministry of Finance (Department of Revenue)
Central Board of Excise & Customs, New Delhi

Subject : Applicability of exemption under Sr. No. 4 of the Notification 4/2006 - C.E., dated 1-3-2006 on import of Ore Concentrates - Regarding.

Doubts have been raised whether on imports of Ore Concentrate classifiable under Chapter 26 of the First Schedule to the Customs Tariff Act, 1975, the benefit that is admissible to "Ore" under Serial Number 4 of the Notification No. 4/2006-C.E., dated 1-3-2006 can be granted to the "Concentrate" of that Ore. The issue was taken up for discussion during the Conference of Chief Commissioners of Customs on Tariff and allied matters held in May 2011.

2. *The matter related to :* (a) whether the term 'Ore' includes Concentrate, and (b) Whether insertion of Chapter Note 4 in the Chapter 26 will have any impact on the admissibility of notification benefit to Concentrates, was examined. The Conference noted the HS definitions of Ore and Concentrate are as follows :

"The term 'ore' applies to metalliferous minerals associated with the substances in which they occur and with which they are extracted from the mine; it also applies to native metals in their gangue (e.g. metalliferous sands").

"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 might hamper subsequent metallurgical operations or with a view to economical transport".

It was also seen that the recent changes in the Central Excise Tariff treating the concentration of ore as amounting to manufacture would not in any way change the definition of Ore or Concentrate for the purpose of classification. This has been reiterated in a number of judgments and also vide Board Circular No. 696/12/2003-CX, dated 26-2-2003 [2003 (152) E.L.T. T44].

3. In view of Chapter Note 4 to Chapter 26 of CETA, 1985 inserted vide Finance Act 2011, Ores and Concentrates are two distinct products. Thus, Concentrates suffer Central Excise duty being a manufactured product. The implication for imported Concentrates is that the benefit of exemption of additional duty of Customs leviable under Section 3 of Customs Tariff Act, 1975 in terms of a notification that applies only to Ores is no longer available to Concentrates, even if Concentrates and Ores fall under the same tariff heading.

4. Thus, it is concluded in the Conference that the benefit of exemption notification under Sr. No. 4 of the Notification 4/2006-C.E., dated 1-3-2006 will be available only to imported Ores and not to imported Concentrates.

5. Suitable instructions may be given to the field formation and all pending assessments, if any, may be finalized accordingly. Difficulty faced, if any, may be brought to notice of the Board.

22. In the present case, the processes narrated above applied to the Zircon Ore to remove impurities thereby the resultant product is Zircon Ore concentrate. This is also revealed from the statement of Shri Babu Varghese K, Head Materials Manager dated 21.12.2011 of the appellant explaining the manufacturing process carried out by them, he has stated as:

"On being asked, I state that M/s. SEPR Refractories India Limited are registered in the business of manufacture of Electro Cast Refractories (Alumina Fused Cast Refractories) falling under Chapter No.6902 20 20 – Fused cast refractory is a high density material obtained by melting a mixture of purest oxides like Alumina, Zirconia & Silica in an electric arc furnace and cast into required shapes. Since the major constituent is Al203 (Alumina) it is called as Alumina Fused Cast Refractories. These

> materials are specially made based on the exact requirement of Glass Furnace manufacturing Zircon Sand is one of the major raw materials in our product……………………………………………….."

Thus, the imported materials are not further subjected to any process for removal of impurities but used as raw materials in the manufacture of their final product. Hence, the imported goods are not ores but concentrates. Therefore, the imported goods are Zircon concentrate as has been opined by Chemical Examiner DRCL, Vadodara. The judgment referred by the appellant in the above cases has not examined the meaning of 'ores' and 'concentrate' as explained in the HSN Notes vis-à-vis Circulars issued from time to time.

23. It has been held by the Hon'ble Supreme Court in a series of cases that HSN Chapter Note 4 to Chapter 26 are guides to classification of the imported goods under Customs Tariff Act and cannot be brushed aside. Their Lordships in the case of **Thermax Ltd. Vs. CCE, Pune-I: 2022 (382) ELT 442(SC)** observed as follows:

> **"6.** The definition of a product given in the HSN should be given due weightage in the classification of a product for the purpose of levying excise duty. This is because in the Statement of Objects and Reasons of the Bill leading to enactment of *Central Excise Tariff Act, 1985*, it was clearly stated that the pattern of tariff classification is broadly based on the system of classification derived from the *International Convention on the Harmonised Commodity Description and Coding System* (Harmonised System) with such contraction or modification thereto as are necessary, to fall within the scope of the levy of Central Excise duty. The tariff so suggested for the levy under the Indian Tariff Act is based on an internationally accepted nomenclature, in the formulation of which, all considerations, technical and legal, have been taken into account. This was done to reduce avoidable disputes on tariff classification. Besides, the tariff would be on the lines of the harmonized system. It was also

borne in mind that the tariff on the lines of the harmonized system would bring about considerable alignment, between the Customs and Central Excise Tariffs, which in turn, would facilitate charging of additional customs duty on imports, equivalent of excise duty. It was therefore expressly stated in the Statement of Objects and Reasons that the Central Excise Tariff are based on the HSN and the internationally accepted nomenclature was as such taken into account, to reduce tariff classification disputes. Thus, it was suggested that a safe guide for classification is the internationally accepted nomenclature emerging from the HSN and in case of doubt, the HSN should be chosen advisory for ascertaining the true meaning of any expression used in the Tariff Act. In *Wood Craft* (supra), in the opinion written by Justice J.S. Verma, the following was pertinently opined in this context :

> "12. … .. Accordingly, for resolving any dispute relating to tariff classification, a safe guide is the internationally accepted nomenclature emerging from the HSN. This being the expressly acknowledged basis of the structure of Central Excise Tariff in the Act and the tariff classification made therein, in case of any doubt the HSN is a safe guide for ascertaining the true meaning of any expression used in the Act. The ISI Glossary of Terms has a different purpose and, therefore, the specific purpose of tariff classification for which the internationally accepted nomenclature in HSN has been adopted, for enacting the Central Excise Tariff Act, 1985, must be preferred, in case of any difference between the meaning of the expression given in the HSN and the meaning of that term given in the Glossary of Terms of the ISI.
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> 18. We are of the view that the Tribunal as well as the High Court fell into the error of overlooking the fact that the structure of the Central Excise Tariff is based on the internationally accepted nomenclature found in the HSN and, therefore, any dispute relating to tariff classification must, as far as possible, be resolved with reference to the nomenclature indicated by the HSN unless there be an express different intention indicated by the Central Excise Tariff Act, 1985 itself. The definition of a term in the ISI Glossary, which has a different purpose, cannot, in case of

a conflict, override the clear indication of the meaning of an identical expression in the same context in the HSN. In the HSN, block board is included within the meaning of the expression "similar laminated wood" in the same context of classification of block board. Since the Central Excise Tariff Act, 1985 is enacted on the basis and pattern of the HSN, the same expression used in the Act must, as far as practicable, be construed to have the meaning which is expressly given to it in the HSN when there is no indication in the Indian tariff of a different intention."

7. Commenting on the importance of taking guidance from HSN Classification and how a taxing statute should be construed in consonance with their commonly accepted meanings in the trade and popular sense, Justice Sanjiv Khanna in *D.L. Steels* (supra) also so correctly observed as follows :-

"9. The Harmonised System of Nomenclature[9], developed by the World Customs Organisation, has been adopted in India by way of the Customs Tariff Act, 1975, though there are certain entries in the Schedules to this Act which have not been assigned HSN codes. The Harmonised System is governed by the *International Convention on Harmonised Commodity Description and Coding System*, which was adopted in 1983, and enforced in January, 1988. This multipurpose international product nomenclature harmonises description, classification, and coding of goods. While the primary objective of the HSN is to facilitate and aid trade, the Code is also extensively used by governments, international organisations, and the private sector for other diverse purposes like internal taxes, monitoring import tariffs, quota controls, rules of origin, transport statistics, freight tariffs, compilation of national accounts, and economic research and analysis. In the present times, given the widespread adoption of the Harmonised System by over 200 countries, it would be extremely difficult to deal with an international trade issue involving commodities, without adverting to the Harmonised System. The Code is the bedrock of custom controls and procedures. The HSN consists of over 5000 commodities groups, which are structured into 21 Sections and 97 Chapters, which are further divided into four and six digit sub-headings. Many custom administrations, like India, use an eight or more digit commodity coding system, with the first six digits being the HSN code.

10. Classification under the Harmonised System is done by placing the goods under the most apt and fitting sub-heading. This is done by choosing the appropriate Chapter, Heading, and sub-heading respectively. To facilitate interpretation and classification, each of the 97 Chapters in the HSN contain corresponding Chapter Notes, General Notes, and Explanatory Notes applicable to the Headings and sub-headings within that Chapter. In addition, there are six General Rules of Interpretation applicable to the Harmonised System as a whole.

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12. We would, at this stage, take on record the well-settled principle that words in a taxing statute must be construed in consonance with their commonly accepted meaning in the trade and their popular meaning. When a word is not explicitly defined, or there is ambiguity as to its meaning, it must be interpreted for the purpose of classification in the popular sense, which is the sense attributed to it by those people who are conversant with the subject matter that the statute is dealing with. This principle should commend to the authorities as it is a good fiscal policy not to put people in doubt or quandary about their tax liability. The common parlance test is an extension of the general principle of interpretation of statutes for deciphering the mind of the law-maker. However, the above rule is subject to certain exceptions, for example, when there is an artificial definition or special meaning attached to the word in a statute, then the ordinary sense approach would not be applicable."

24. Therefore, what imported by the Appellant was Zirconium Ore concentrate, hence the department is justified in denying the benefit of exemption Notification No.4/2006-CE dated 01.03.2006 to the imported goods.

25. Interpretation of an exemption Notification as laid down by the Hon'ble Supreme Court in **Commissioner of Cus. (Import), Mumbai vs. Dilip Kumar & Company: 2018 (361) ELT 577 (SC)** has to be strictly interpreted and in case of any ambiguity, be decided in favour of the Revenue. Their Lordships observed as:

> "**28.** With the above understanding the stage is now set to consider the core issue. In the event of ambiguity in an exemption notification, should the benefit of such ambiguity go to the subject/assessee or should such ambiguity should be construed in favour of the revenue, denying the benefit of exemption to the subject/assessee? There are catena of case laws in this area of interpretation of an exemption notification, which we need to consider herein. The case of *Commissioner of Inland Revenue* v. *James Forrest,* [(1890) 15 AC 334 (HL)] - is a case which does not discuss the interpretative test to be applied to exemption clauses in a taxation statute - however, it was observed that *'it would be unreasonable to suppose that an exemption was wide as practicable to make the tax inoperative, that it cannot be assumed to have been in the mind of the Legislature' and that exemption 'from taxation to some extent increased the burden on other members of the community'.* Though this is a dissenting view of Lord Halsbury, LC, in subsequent decisions this has been quoted vividly to support the conclusion that any vagueness in the exemption clauses must go to the benefit of the revenue. Be that as it is, in our country, at least from 1955, there appears to be a consistent view that if the words in a taxing statute (not exemption clause) are ambiguous and open to two interpretations, the benefit of interpretation is given to the subject and it does not matter if the taxpayer escapes the tax net on account of Legislatures' failure to express itself clearly (See the passage extracted hereinabove from *Kesoram Industries* case (supra)).
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> **40.** After considering the various authorities, some of which are adverted to above, we are compelled to observe how true it is to say that there exists unsatisfactory state of law in relation to interpretation of exemption clauses. Various Benches which decided the question of interpretation of taxing statute on one hand and exemption notification

on the other, have broadly assumed (we are justified to say this) that the position is well-settled in the interpretation of a taxing statute : It is the law that any ambiguity in a taxing statute should enure to the benefit of the subject/assessee, but any ambiguity in the exemption clause of exemption notification must be conferred in favour of revenue - and such exemption should be allowed to be availed only to those subjects/assesses who demonstrate that a case for exemption squarely falls within the parameters enumerated in the notification and that the claimants satisfy all the conditions precedent for availing exemption. Presumably for this reason the Bench which decided *Surendra Cotton Oil Mills* case (supra) observed that there exists unsatisfactory state of law and the Bench which referred the matter initially, seriously doubted the conclusion in *Sun Export* Case (supra) that the ambiguity in an exemption notification should be interpreted in favour of the assessee.

41. After thoroughly examining the various precedents some of which were cited before us and after giving our anxious consideration, we would be more than justified to conclude and also compelled to hold that every taxing statute including, charging, computation and exemption clause (at the threshold stage) should be interpreted strictly. Further, in case of ambiguity in a charging provisions, the benefit must necessarily go in favour of subject/assessee, but the same is not true for an exemption notification wherein the benefit of ambiguity must be strictly interpreted in favour of the Revenue/State.

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43. There is abundant jurisprudential justification for this. In the Governance of rule of law by a written Constitution, there is no implied power of taxation. The tax power must be specifically conferred and it should be strictly in accordance with the power so endowed by the Constitution itself. It is for this reason that the Courts insist upon strict compliance before a State demands and extracts money from its citizens towards various taxes. Any ambiguity in a taxation provision, therefore, is interpreted in favour of the subject/assessee. The statement of law that ambiguity in a taxation statute should be interpreted strictly and in the event of ambiguity the benefit should go to the subject/assessee may warrant visualizing different situations. For instance, if there is ambiguity in the subject of tax, that is to say, who are the persons or things liable to pay tax, and whether the revenue has established conditions before raising and justifying a demand. Similar is the case in roping all persons within the tax net, in which event the State is to prove the liability of the persons, as may arise within the strict language of the law. There cannot be any implied concept either in identifying the subject of the tax or person liable to pay tax. That is why it is often said that subject is not to be taxed, unless the words of the statute unambiguously impose a tax on him, that one has to look merely at the words clearly stated and that there is no room for any intendment nor presumption as to tax. It is only the letter of the law and not the spirit of the law to guide the interpreter to decide the liability to tax ignoring any amount of hardship and eschewing equity in taxation. Thus, we may emphatically reiterate that if in the event of ambiguity in a taxation liability statute, the benefit should go to the subject/assessee. But, in a situation where the tax exemption has to be interpreted, the benefit of doubt should go in favour of the revenue, the aforesaid conclusions are expounded only as a prelude to better understand jurisprudential basis for our conclusion. We may now consider the decisions which support our view.

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52. To sum up, we answer the reference holding as under -

(1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.

(3) The ratio in *Sun Export* case (supra) is not correct and all the decisions which took similar view as in *Sun Export* case (supra) stands overruled."

On the face of ambiguous situation i.e., whether the composition of the ore be the decisive factor or the meaning of ore and concentrate based on the HSN Notes, Chapter Notes, Circular and the deemed definition of manufacture be criteria in distinguishing ore from concentrate, applying the aforesaid ratio, the benefit of the Notification 04/2006 CE dt.01.3.2006 also cannot be extended to the Appellant.

26. Further, we do not find merit in the submission of the learned advocate for the appellant that rejection of their request for cross-examination of the Chemical examiner by the adjudicating authority would make the impugned order bad in law. We find that in the Chemical Examiner's report, the composition of the sample has been recorded and no contrary report has been placed by the appellant disputing the said composition nor any evidence has been brought any record that the method/procedure followed in the drawl of sample/chemical analysis by the authority is contrary to the laid down procedure. Also, the adjudicating authority has not decided the admissibility of exemption Notification solely based on the said Chemical Examiner's report but also on various evidences discussed in the order and principles of law laid down on the subject; therefore, non-acceptance of the request cross-examination of the Chemical Examiner would in no manner render the impugned order bad in law.

27. Since the issue relates to interpretation of law concerning the admissibility of the benefit of the exemption Notification, therefore, imposition of penalty under Section 112(a) is not justified.

28. In the result, the impugned Order relating to Appeal No. C/22223/2015 is modified to the extent of setting aside the penalty and the said appeal is partially allowed to that extent; Appeal Nos. C/21295/2016 and C/21851/2016 are rejected.

(Order pronounced in Open Court on 13.04.2026.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)