

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

REGIONAL BENCH - COURT No. III

Excise Appeal No. 40741 of 2024

(Arising out of Order-in-Original No.MDU-CEX-COM-47-2018 dated 15.03.2018 passed by Commissioner of CGST & Central Excise, Central Revenue Buildings, Bibikulam, Madurai 625 002)

M/s.Miracle Sands and Chemicals

.... Appellant

4/191, 9th K.M. Ettayapuram Road,
Mela Arasadi,
Tuticorin 628 003.

VERSUS

**The Commissioner of GST &
Central Excise**

... Respondent

Central Revenue Buildings,
L.B. Road, Bibikulam
Madurai 625 002.

APPEARANCE :

Shri S. Jai Kumar, Advocate
Shri M. Karthikeyan, Advocate
for the Appellant

Shri Sanjay Kakkar, Authorized Representative for the Respondent

CORAM :

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No.40573/2026

DATE OF HEARING : 03.02.2026
DATE OF DECISION : 06.05.2026

Per: Shri P. Dinesha

This Appeal filed by M/s Miracle Sands and Chemicals, Ettayapuram Road, Tuticorin, the Appellant herein, is directed against Order-in-Original No.MDU-CEX-COM-47/2018 dated 15.03.2018 of the Commissioner of CGST & Central Excise, Madurai confirming an amount of Rs.6,08,35,533/- as Central Excise Duty on 'Concentrated Ores' manufactured and cleared during the period from 01.03.2011 to 07.06.2022 under Section 11A (4) of the Central Excise Act, 1944 (CEA, for short) besides demanding interest on the amount of duty confirmed and imposing penalty equivalent to the demand.

2. Appellant appears to have initially challenged the Impugned Order dated 15.03.2018 before the Hon'ble High Court of Madras, Madurai Bench by filing a Writ Petition under Article 226 of the Constitution of India; the Hon'ble High Court, *vide* its Order dated 19.10.2022 in W.P (MD) No. 13887 of 2018, however, dismissed the same with liberty to file a statutory appeal within a period of 3 weeks

from the date of receipt of a copy of the Order. Appellant appears to have challenged the Order of the single Judge by filing a Writ Appeal which was also dismissed granting liberty to the Appellant to file statutory appeal within a period of 3 weeks from the date of receipt of a copy of the Order, *vide* Order dated 11.07.2014 in W.A (MD) No. 1131 of 2024. Resultantly, present Appeal was filed by the Appellant before this forum.

3. Facts in brief, which are necessary for disposal of this Appeal are that the accounts of the Appellant were subjected to audit by an Internal Audit Team from the Department during the month of January 2014 and it was noticed that the Appellant did not discharge duty liability on Titanium Concentrates such as 'Ilmenite'; and Rutile during the period from 01.03.2011 to 07.06.2002. Based on audit findings, a Show Cause Notice [No.10/COMMR/CE/2016] dated 01.04.2016 was issued by the Respondent-Commissioner demanding the aforesaid amount as duty on the grounds that: the Appellant imported Ilmenite sand and Rutile sand in addition to sourcing them indigenously; foreign matters in minerals so procured were removed using the minerals-separation machineries; the resultant products viz. purified and concentrated Ilmenite and Rutile were marketed by the

Appellant as 'Hi grade sands' (70% & 80% grade concentrated mineral) as evidenced from the sales invoices issued; and in view of the amendment made to Note 4 of Chapter 26 of the CETA, 1985 that the process of converting Ores into Concentrates shall amount to 'manufacture', the Titanium Concentrates – Ilmenite and Rutile – manufactured and cleared by the Appellant should suffer Central Excise duty from 01.03.2011 under CETH 2614. Appellant's claim, while furnishing details of clearances to the Department for quantification of duty, that sales to 100% EOUs and 'as such' clearances should be excluded for arriving at the quantum of sales was rejected for the reasons that proper procedure was not followed for duty-free clearances to 100% EOUs besides there being no evidence to prove that the materials were received by the buyers (100% EOUs) and only processed and concentrated minerals ought to have been removed to manufacturers of electrodes thereby disguising such dutiable removals as 'as such' clearances i.e. raw un-processed or non-concentrated minerals. Appellant's claim for excluding 'export sales' and 'Wood Charcoal Sales' was, however, accepted. For invoking extended period of limitation, it was alleged that: Appellant suppressed the manufacture of Concentrates which attracted duty from

01.03.2011 and removed them clandestinely; this came to light during audit; and but for the timely action taken by the Department, evasion would not have come to light thereby causing loss to Exchequer.

4. The Appellant, in its reply to the SCN, appears to have requested for dropping of the proceedings mainly on the following grounds:

(i) The imported Titanium Ore is subjected to the process of separation by physical and mechanical system (as shown in the manufacturing machinery diagram). The manufacturing machinery diagram would make it clear that only mechanical process is undertaken and no chemical treatment or special process including roasting or chemical treatment is carried out. After completion of the process, the separated mineral sands had the same properties as they had at the time of import. No up-gradation or augmentation of purity of the mineral sands took place during the processes. Technical opinion given by an expert in the field also vouched that the properties in both the imported Titanium Ore and the processed Titanium Ore remained the same both at the time of import and after processing. Therefore, in view of the decision of CESTAT in the case of

M/s. Indian Rare Earths Limited Vs CCE [2002 (139) ELT 352 (Tri.-Kol)] as affirmed by the Hon'ble Supreme Court in 2009 (241) ELT A70 (S.C), no liability to duty arises.

(ii) Even CBEC has clarified *vide* Circular dated 17.02.2012, that levy of excise duty is attracted only in cases where the product satisfies the definition of 'Concentrate' as per HSN Notes which read 'ores which have had part or all of the foreign matter removed by special treatment either because such foreign matter may hamper subsequent metallurgical operations or with a view to economical transport', whereas it is the Appellant's case that even after the processes undertaken, Titanium Ore remains as Ore and is not getting converted into Concentrate. It is settled law that Board's instructions are binding on Department officers. Relied upon case law are as under:

- (a) **Hindustan Coca-cola Beverages Pvt. Ltd. Vs UOI** [2013 (296) ELT 150 (All.);
- (b) **CCE Delhi Vs Orient Steel Industries** [2010 (254) ELT 630 P&H]
- (c) **UOI Vs Ariviva Industries (I) Ltd.** [2007 (209) ELT 5 (SC)]
- (d) **Smatchem Technologies Ltd. Vs UOI** [2011 (272) ELT 522 (Guj.)].

(iii) The Assistant Commissioner of Customs, Turicorin, vide letter C.No. VIII/06/20/2016-Exp dated 13.01.2017, having held the product as 'unprocessed Ilmenite' meriting classification under CTH 26140010 (for purpose of export duty @10%), Revenue cannot take a divergent view by classifying the same product under CETH 26140020 (which attracted lesser export duty of 2.5%) for levy of Central Excise Duty.

(iv) As the issue involves interpretation of statute which had been disputed all along, invoking the extended period of limitation is not correct. Besides, Appellant neither suppressed anything nor had any intention to evade duty payment as all the particulars have been collected from the books of accounts maintained by the Appellant. Actions arising out of *bonafide* belief cannot be saddled with liability under the extended period [Case law relied upon : **Tamil Nadu Housing Board Vs Collector**-1994 (74) ELT 9 SC)], **Padmini Products VS Collector** -1989 (43) ELT 195 (SC)].

(v) They were under the *bona fide* belief that the processes undertaken by them did not attract Excise levy. Procedure as prescribed was not followed for clearing the goods to 100% EOUs, though they have now obtained

Certificates from the EOUs proving receipt of the goods cleared by them. Therefore, duty-free benefit should be extended to such clearances [Case law relied upon : **Jain Irrigation Systems Ltd. Vs CCE Nashik**-2016 (336) ELT 88 (Tri.-Mumbai)].

(vi) Report/Opinion dated 29.03.2007 of a welding rod manufacturer who has been in the field for more than a decade establishes that the items they cleared were 'as such removals' i.e. raw un-processed or non-concentrated minerals and not concentrates since use of latter would result in crack-formation in welding rod and cause higher-level smoking & spatter.

5. The Respondent-Commissioner, however, confirmed the proposals made in the SCN, by recording the following findings:

(i) In view of the order of CESTAT in the case of **M/s Indian Rare Earths Limited** reported in 2016 (338) ELT 274 (Tri. Kolkatta), Appellant's contention that in the absence of the Ores being subjected to any chemical treatment or special process including roasting or chemical treatment, the resultant products did not merit classification

as mineral Concentrates could not be accepted. Therefore, the processes undertaken by the Appellant on the imported / indigenously procured Limenite sand and Rutile sand resulting in emergence of the products marketed by the Appellant as Hi grade sands, namely 70% grade and 80% grade resulted in conversion of Ores to Concentrates thereby constituting manufacture under Clause (ii) of Section 2(f) read with Note 4 of Chapter 26 of CETA, 1985.

(ii) Board's Circular dated 17.02.2012 and the case laws relied upon as to the binding nature of Board's instructions are of no use since in the mechanical process undertaken in Wet Plant of the Appellant and in Dry Plant (in the case of processes undertaken at the 100% EOU Plant which are shown as EOU sales), part of foreign matters got removed resulting in manufacture of Limenite Concentrate of High Grade.

(iii) Various decisions of CESTAT cited by the Appellant to contend that no manufacture was involved in this case do not come to their aid since the decisions were rendered prior to insertion of Note 4 in Chapter 26 of CETA, 1985 whereas the issue under consideration needs to be examined in the light of Clause (ii) of Section 2(f) of CEA,

1944, Note 4 to Chapter 26, CBEC Circular dated 17.02.2012 and judicial pronouncements on the concept of manufacture with particular reference to Chapter Note/Section Note. It is clear from the decision of CESTAT in the case of **M/s Indian Rare Earths Limited** *supra*, the processes undertaken by the Appellant resulted in emergence of Concentrates exigible to duty.

(iv) The letter dated 13.01.2017 of the Assistant Commissioner of Customs, Turicorin holding the product exported as Unprocessed Ilmenite meriting classification under CTH 26140010 serves no purpose since there is no evidence on record to link the product under discussion to the exported product spoken of in the afore-said communication of the Assistant Commissioner of Customs.

(v) Only after the IAD, Tirunelveli found out during audit in January 2014 that Concentrates of Ilmenite, Rutile and garnet were cleared by the Appellant without payment of duty from 01.03.2011 to 07.06.2012, the Appellant in letter dated 03.03.2014 informed the Range Superintendent that they included Rutile, Zircon, garnet and Ilmenite in the Registration Certificate on 09.10.2012. The fact that the Appellant started collecting duty from 08.06.2012 indicates

that Appellant knew that they were liable to pay duty. Non-payment of duty in the guise of trading of the subject goods is a clear proof of Appellant's intent to evade duty payment (Para 31.3). Appellant's plea of bona fide belief (of the products not exigible to duty) for not following the procedure for clearance to 100% EOUs cannot be accepted since they have been in the business from the year 1994 and thus non-compliance with the procedure associated with clearances to 100% EOUs is to be regarded as a cover-up of Appellant's intent to evade duty payment. The certificate given by 100% EOUs later with details of proof of receipt of raw materials confirm conversion of the same as 'Concentrates' and clearance of Concentrate would attract Central Excise duty (para 32.2).

(vi) Opinion of the welding rod manufacturer can at best be regarded as the view specific to his product. Moreover, this suggestion in the Show Cause Notice is not the main basis for confirming the demand (Para 33.2).

(vii) The information contained in relied-upon documents viz., Trading and P&L account that payments were towards 'wages to labourers' and 'Power consumed' and in Form CT-3 declaring the nature or business or

profession carried out as Mixing, Processing and manufacturing of rare earth products from Ore/sand of Minerals conclusively prove that the Appellant carried on the manufacture of goods for which duty has been demanded.

The above Order-in-Original has been assailed by the tax-payer in this Appeal.

6. In the Grounds of Appeal, Appellant has pleaded for setting aside the impugned order on the following grounds:

(i) In as much as the physical and mechanical processes carried out by them merely separated mineral sand from naturally occurred ore sand; the separated mineral sand had the same chemical composition; and no upgradation or augmentation of purity took place, there was no conversion of 'Ore' into 'Concentrate' justifying levy. Decisions of co-ordinate CESTAT Benches in the following cases were cited in support.

(a) **M/s Classic Microtech Private Limited**
2012 (285) ELT 418

(b) **M/s Malu Electrodes Private Limited**
2018 (364) ELT 1023

(ii) No manufacturing activity is involved in merely separating minerals from beach sand by physical and mechanical processes as held by the CESTAT in the case of **M/s. Kerala Minerals & Metals Limited Vs CCE, Kochi** [2007 (214) ELT 556 (Tri. Bang.)]. While rendering the said decision, CESTAT followed the decision of CESTAT in the case of **M/s. Indian Rare Earths Limited Vs Commissioner** [2002 (139) ELT 352 (Tribunal)] which stood affirmed by the Hon'ble Supreme Court, *vide* 2012 (283) ELT A112 and also considered the Supreme Court judgments in the following cases:

- (a) **M/s Hyderabad Industries Limited**
1995 (78) ELT 641 (SC)
- (b) **M/s Mineral and Metals Trading Corpn** 1983 (13) ELT 1542 (SC)

(iii) The finding of the Respondent-Adjudicating Authority that the Appellant manufactured Ilmenite Concentrate by misusing the dry processing facility available at the 100% EOU and cleared the same clandestinely has no basis whatsoever as even the SCN did not allege so.

(iv) Since the issue involved, i.e., interpretation of Notes 2 and 4 of Chapter 26 of CETA, 1985; consideration of clarifications issued by the Board and various decisions / judgments; *bona fide* belief entertained by the Appellant

that the process of separation of mineral ore from naturally occurred ore sand did not result in conversion of 'Ores' into 'Concentrates'; and the Central Excise field officers visited their unit for supervising in-house stuffing before granting clearance for export, therefore, invoking extended period for demand is not justified.

(v) Since receipt of goods by the 100% EOUs is admitted by the commissioner, the demand pertaining to clearances made to EOUs should be set aside.

(vi) The Appellant was also engaged in supply of naturally occurred mineral sand, which were either imported or sourced indigenously, without subjecting them to the process of separation of mineral sand ore. In such cases, the bulk quantity available in loose form in containers at the time of import were packed in loose form in jumbo bags for ease of transportation. It is incorrect to label such purely traded goods as Concentrates.

(vii) Even if the processes carried out are accepted as giving rise to a manufactured product, if the value of goods cleared to 100% EOUs constituting 80% and 'as such' sales (traded goods) constituting 15% is excluded from the turnover arrived at for quantification, the dutiable portion would be within the non-taxable limit of Rs. 1.5 crores.

7. When the Appeal was taken up for hearing, Sri. S. Jaikumar, Ld. Advocate appearing for the Appellant requested for setting aside the Impugned Order on the following grounds:

(i) As the process/separation undertaken by the Appellant on Titanium Ores did not result in any new product having a distinct name, character and use, the processed Ores were not exigible to duty till 28.02.2011.

(ii) Effective from 01.03.2011, Note 4 was introduced in Chapter 26 of the CETA, 1985 which read "In relation to products of this Chapter, the process of converting ores into concentrates shall amount to 'manufacture'" thereby making the processed mineral sands exigible to duty from that date.

(iii) Appellant was unaware of this statutory amendment but started paying duty from 08.06.2012 after coming to know about the liability.

(iv) The only allegation in the SCN for invoking extended period is that but for the audit, non-payment of duty would have gone unnoticed. Invoking extended period is not justified for this reason alone in the absence of proof

of fraud or collusion or wilful mis-statement or suppression of facts.

(v) Non-payment of duty was found out during audit conducted on 06.01.2014 and 31.01.2014. In terms of the decision of CESTAT in the case of **M/s. Gold Seal Engineering Products** [2025 (11) TMI 1437], demand under extended period is not sustainable when the entire records on the basis of which audit objections were raised were made available to the department and nothing was hidden from the financial records.

(vi) Appellant was under the *bona fide* belief that the goods produced by them stood exempted under Notification No.4/2006-CE dated 01.03.2006. This is also clear from the statement dated 04.03.2015 given by Mr. S.P.S. Palani Selvam, Partner wherein while categorically denying that any manufacturing activity took place in the unit, he appears to have admitted that they were not doing any chemical treatment; all they did was only 'Ore dressing' as minerals-separation is done by physical separation only and during the process the atoms or molecules cannot be changed. Besides the issue being an interpretational one, extended

period of limitation cannot be invoked, as held in the following cases.

- (a) **M/s Apollo Tyres Limited**
2026 (1) TMI 1511–Cestat, Chennai
- (b) **M/s Rungta Mines Limited**
2016(4) TMI 602-Cestat, Kolkatta

(vii) While answering a specific question as to whether he knew that liability arose from 01.03.2011, Mr. S.P.S. Palani Selvam, Partner in his statement dated 04.03.2015 answered in the negative and further stated that even government units like M/s IRE Limited and M/s KMML from whom Appellant made purchases started paying duty only from June 2012 and Appellant also started paying duty from June 2012 after amending the Registration Certificate by including concentrated minerals. These facts therefore establish that the Appellant was under the *bona fide* belief that the processes carried on did not result in products exigible to duty. Secondly, facts being so, it is incorrect to say that the Department became aware of non-payment of duty only during audit in the year 2014 as the statutory returns pertaining to payment of duty from 08.06.2012 would have reflected duty payments.

(viii) During the material time, Appellant was engaged in sale of processed mineral sands as well as sale of sands 'as such'. Major portion of the sale of processed mineral sands took place in two 100% EOUs, namely, M/s Cochin Minerals and Rutile Limited and M/s Miracle Sands and Metals; since both the Appellant as well as the said 100% EOUs were unaware of the duty liability on processed mineral sands, the prescribed procedure (CT-3) was not followed. After initiation of the adjudication proceedings, certificates were obtained from both the units as regards receipt and utilization of the goods for the intended purpose. On the strength of the certificates so obtained, Appellant requested the Commissioner-Adjudicating Authority to exempt the clearances from the purview of levy since clearances to 100% EOUs stood exempted. This plea was not only dismissed with an observation that non-following of the procedure should be regarded as a cover-up for willful intent to evade duty-payment. In the following decisions / judgments, it has been categorically held that procedural lapses cannot override substantive exemptions.

(a) **M/s Microlab Limited**

2026 (1) TMI 1072 – CESTAT Kolkatta

(b) **M/s KEC International Limited**

2024 (10) TMI 1252

(c) M/s Forging Machinery Mfg. Company –
2017(11)TMI 1037

(ix) 'As such' sale of mineral sands to welding electrode manufacturers was supported by an opinion obtained from the Director of M/s.Superflux and Electrodes, one of the customers, as to the use of unprocessed sands alone in the manufacture of welding electrodes but it was rejected with a finding that the opinion can at best be regarded as specific to their product. Having done so, the Adjudicating Authority should have at least excluded from the demand clearances made to that unit.

(x) 'As such' clearances took place both before and after 07.06.2012. While the department has termed the 'as such' clearances of mineral sands as dutiable till 07.06.2012, it has accepted the 'as such' clearances from 08.06.2012 as genuine and non-dutiable since there has been no demand on such clearances post 07.06.2012 (sample copies of invoices made available).

(xi) Sanction of Appellant's claim for refund of Special Additional Duty (SAD) in respect of mineral sands imported and sold as such against payment of VAT proves that the Appellant was engaged in 'as such' sales.

(xii) Once the clearances towards EOUs and 'as such' sales are excluded from the demand, the value of clearances is within the SSI exemption limit.

He would thus pray for setting aside the impugned order and allow the Appeal.

8. *Per contra*, Shri Sanjay Kakkar, Ld. Authorized Representative of the Department while relying on the reasons in the Impugned Order, also filed a written submission titled as 'cross objections' containing the following points with a request to sustain the Impugned Order:

(i) In the case of **M/s Indian Rare Earths Limited** [2016 (338) ELT 274 (Tri.Kol)], analyzing similar facts, Kolkata Bench has held that processes such as washing, magnetic separation and gravity separation (including those undertaken by the Appellant) amounted to manufacture irrespective of chemical treatment.

(ii) It has been held by the Hon'ble Supreme Court in various decisions including the judgment in the case of **M/s Star Industries Vs CC (Imports) Raigad** [2015 (324) ELT 656 (SC)] that once a legal fiction is created by a

Chapter Note that a process amounts to manufacture, it is irrelevant to test whether a new commodity has emerged or not, to justify levy.

(iii) The ratio of the decision of CESTAT in the case of **M/s Malu Electrodes Pvt. Ltd. Vs CC Nhava Sheva** [2018 (364) ELT 1023 (Tri.-Mumbai)] has no persuasive value since on appeal by the Department, the Hon'ble Supreme Court [**2024 (12) TMI 1253 – SC**] has set aside the Order by remanding back, with an observation that the CESTAT had overlooked the facts of the case even on limitation.

(iv) Board's Circular No. 09/2012-Cus dated 23.03.2012 clarifies that 'Ores' and 'Concentrates' are two different products and Concentrates undergo special treatments (mechanical/physical processes) to remove foreign matter thereby resulting in manufacture.

(v) It has been rightly held by the Commissioner that the processes of washing, magnetic separation, shaking tables and drying employed by the Appellant constituted special treatments or beneficiation for eliminating foreign materials thereby converting Ores into Concentrates.

(vi) As rightly recorded by the Commissioner, the evidences pointed to the fact that the listed machineries

(given in the letter-heads of the Appellant and their sister concern) were duly installed in the premises and the facility available in the adjacent sister-unit was interchangeably used to manufacture Concentrates and remove them clandestinely with sharing facilities.

(vii) Multiple instances including non-declaration in ER-1 returns, concealment under the guise of trading through its 100% EOU and *post-facto* commencement of duty payment showed clear intention to evade duty with a conscious and deliberate withholding of information.

(viii) There is no scope for any interpretation in this case as the issue relating to classification has been settled by the decision in the case of **M/s Indian Rare Earths Limited.**

(ix) Appellant's plea of *bona fide* belief cannot be accepted since when the Rule book is clear, there exists no reason for *bona fide* belief and blind belief is different from *bonafide* belief as is clear from the decision of CESTAT in the case of **M/s Continental Drugs Company Pvt. Ltd. Vs CST Mumbai** [2015 (39) STR 154 (Tri.-Mum)].

(x) Disclosure in the books of accounts are of no avail as any declaration to be truthful should be made before

the proper officer at the appropriate time and in a manner known to law.

(xi) Visit of officers to the unit and the adjacent 100% EOU was for the specific purpose of granting exports and the officers are jurisdictionally barred from undertaking any exercise beyond the mandate.

(xii) Hon'ble Supreme Court in a number of judgments has held that justification for invoking extended period depends on the facts and circumstances of each case.

(xiii) Claims for exclusion of clearances to 100% EOUs and 'as such' sales have no basis since stipulated procedures like CT-3 Certificates were not followed and 'as such' clearances were not supported with any evidence.

9.0 We have heard both sides. To our mind, the following issues arise for determination in this Appeal:

(i) Whether the processes carried out by the Appellant resulted in products exigible to duty in terms of Note 4 to Chapter 26 ?

(ii) Whether non-compliance with stipulated procedure stood in the way of the Appellant getting duty-free benefit for clearances made to 100% EOUs?

(iii) Whether the Commissioner was correct in ignoring the plea of the Appellant for excluding 'as such' clearances from the turnover as being without evidence?

(iv) Whether invoking extended period of limitation is justified?

We will deal with each issue in the context of rival submissions, in seriatim:

Issue (i)

9.1.1 At the outset, we notice that in both the SCN as well as the Impugned Order, only 4 digits classification has been proposed/confirmed. While CETH 26140010 covers Ilmenite un-processed, CETH 26140020 applies to Ilmenite, upgraded (beneficiated Ilmenite including Ilmenite ground); as the allegation in the SCN and the findings in the Impugned Order asserts that the physical and mechanical processes carried out on beach sands resulted in mineral separation enabling the Appellant to market the resultant products – Ilmenite and Rutile – as 'Hi grade sands', namely, 70% grade

& 80% grade, we reasonably assume that the confirmation of classification is under CETH 26140020.

9.1.2 We find that the main contention of the Appellant is that the imported / indigenously sourced Titanium and other mineral Ores were subjected to mineral-separation processes by physical and mechanical systems without the Ores being subjected to any chemical treatment or special processes including roasting or chemical treatment and that the properties of the resultant products remained the same even after the processes and hence, there was no upgradation or augmentation of purity of the mineral sands. Precisely, it is the contention of the Appellant that mere separation of mineral sands of Titanium / Rutile / Zircon from the naturally-occurred beach sands by removing other sands / substances without undertaking any chemical process would not give rise to a manufactured product in the absence of upgradation or augmentation of purity of the mineral sands. But the Department is of the view that the process of separation of the afore-said mineral sands from beach sand resulted in conversion of 'Ores' to 'Concentrates' which were marketed by the Appellant as 'Hi grade sands' namely, 70%

grade & 80% grade thereby attracting the mischief of 'manufacture' as defined in Clause (ii) of Section 2(f) of the CEA, 1944 read with Note to Chapter 26 of CETA, 1985 as per which, the term 'Concentrates' applies to 'Ores' which 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 ensure economical transport.

9.1.3 To fortify his conclusion that the processes carried out met the definition of 'manufacture' attracting duty liability in view of Note 4 of Chapter 26 inserted with effect from 01.03.2011, the Commissioner has relied on the CESTAT decision dated 29.02.2016 in the case of **M/s Indian Rare Earths Limited** *supra* and quoted extensively from the facts set out and observations contained therein. In the 'Grounds of Appeal', the Appellant merely said that the conclusion drawn by the Commissioner based on the aforesaid decision of CESTAT was wrong for the reasons that **(i)** only physical or mechanical processes were carried out, **(ii)** beach sands were not subjected to any chemical treatment or special process including roasting and chemical treatment, and **(iii)**

both before and after the processes the products retained the same properties without there being any upgradation or augmentation of purity. Thus, the Appellant did not distinguish the aforesaid decision on factual aspects i.e. the processes undertaken by them and by M/s.Indian Rare Earths Limited resulting in emergence of dutiable products were different or dissimilar or incomparable. Instead, supporting their contention that the processes carried out by them did not result in products exigible to duty, Appellant relied on the decisions of CESTAT in the cases of **M/s Classic Microtech Pvt. Ltd. Vs CC Ahmedabad** [2012 (285) ELT 418 (Tri.-Ahmd.)] and **M/s Indian Rare Earths Limited Vs CCE** [2002 (139) ELT 352 (Tri.-Kol)]; to contend that the departmental appeal against the latter decision was dismissed by the Hon'ble Supreme Court, *vide* 2009 (241) ELT A70 (SC). It is the Appellant's case that in the decision reported in 2002 (139) ELT 352 (Tri.Kol) *supra*, the Bench considered the Supreme Court judgments in the cases of **M/s Hyderabad Industries Ltd. Vs UOI** and **M/s Minerals and Metals Trading Corporation Vs UOI & Others** reported respectively in 1995 (78) E.L.T. 641 (S.C.) and 1983 (13) E.L.T. 1542 (S.C.). Appellant also argued that the decision of CESTAT in the case of **M/s.Malu Electrodes**

Private Limited *supra* which distinguished the CESTAT decision in the case of **M/s Indian Rare Earths Limited** *supra* is in their favour.

9.1.4 We find that the CESTAT decision in the case of **M/s.Indian Rare Earths Limited** *supra* was rendered keeping in view the insertion of Note 4 in Chapter 26 effective from 01.03.2011, whereas the earlier decision of CESTAT in the said Appellant's case reported in 2002 (139) ELT 352 (Tri.-Kol) was confined to the issue as to whether the processes carried out amounted to 'manufacture' or not under Section 2(f) of the CEA, 1944 alone; the insertion of Note 4 to Chapter 26 terming a particular process as amounting to 'manufacture' was not there before the Bench at that point of time. Hence, on the face of it, this CESTAT decision relied upon by the Appellant has no application to the facts of this case. As rightly submitted by the Ld. Authorized Representative of the Department, since CESTAT decision in the case of **M/s.Malu Electrodes Private Limited** *supra* was set aside by the Hon'ble Supreme Court by remand, the ratio therein ceases to have any effect. We also note that while rendering the decision reported in 2016

(338) ELT 274 (Tri.-Kol) *supra* relied by the Commissioner, the Co-ordinate CESTAT bench has considered all the afore-said decisions / judgments *supra* cited by the Appellant and concluded as under:

“5.27 A cumulative reading of the ratios of the above judgments, the Chapter Note 4 of Chapter 26 and the relevant tariff entry, makes the legislative intention and object clear that the processes which on application on ores held by the courts/Tribunal earlier as not amounting to manufacture, by virtue of the chapter note, a legal fiction has been created bringing such processes into the fold of the definition of manufacture, which otherwise in common parlance would not be considered as manufacture. The contention of the appellant that unless the content of Ores improves, the resultant cannot be called as a ‘concentrates’ and accordingly the physical/mechanical processes carried out by them like washing, magnetic separation, gravity separation etc. to sand Ores would not fall under the definition of manufacture, in our opinion, is the result of misunderstanding and incorrect interpretation of the relevant tariff entry, the Chapter Note 4 and clause (ii) of Sec. 2(f) of CEA, 1944. In view of the judgments of this Tribunal if on application of processes on Ores sand its purity/content increases and its use, commercial identity and character is different from the ore, then the resultant would be considered as

“manufactured” and accordingly dutiable. Therefore, in absence of an increase in the purity content by any method, if there cannot be a manufacturing process, the Chapter Note 4 inserted with effect from 1-3-2011 defeat the very purposes and becomes otiose. Such a situation, in our opinion, cannot be the intention of the legislature. Therefore, in our considered opinion application of various processes to ore sand, converts it into concentrates and accordingly in view of the Chapter Note 4 of Chapter 26 becomes manufacture and leviable to Excise duty.”

9.1.5 We also find in the case of **M/s V.V. Minerals Vs CC Tuticorin** [2016 (332) ELT 888 (Tri.-Chennai)] the issue under discussion under identical circumstances came up for consideration before the CESTAT, Chennai Bench. In that case, it was the contention of the Department that the Appellant carried out only physical and mechanical processes and neither roasting or chemical treatment was done nor any enrichment or augmentation of mineral content took place as in this case and, therefore, the goods merited classification under CTH 26140010 as ‘Ilmenite unprocessed’ and not under CTH 26140020 as Ilmenite upgraded (beneficiated Ilmenite including Ilmenite ground) for purpose of export duty. Resting on the ruling of the Hon’ble Supreme

Court in the case of **M/s Tata Steel Limited** reported in 2015 (3) SCALE 759 that beneficiation processes are only related to physical separation, the Bench held that the goods merited classification under CTH 26140020. Further, in the case of **M/s Beach Minerals Company [(2023) 9 Centax 148 (Tri.-Mad)]** involving the same issue on identical facts, Chennai Bench while concurring with the decision of CESTAT *supra*, rejected the contention of the Department that to establish classification under 26140020, Ores or beach sands should be subjected to the processes roasting or chemical treatment. It is also brought to our notice that Appeal filed by the Department against this decision was dismissed by the Hon'ble Supreme Court, *vide* (2023) 12 Centax 174 (SC).

9.1.6 In the case of **M/s Trimax Sands Private Limited Vs CC Visakhapatnam** [2019 (369) E.L.T. 1467 (Tri. - Hyd.)], co-ordinate Hyderabad Bench also had an occasion to decide an identical issue. Relying on the judgment of the Hon'ble Supreme Court in the case of **M/s.Tata Steel Limited** *supra* and following the decision of CESTAT, Chennai in the case of **M/s.V.V.Minerals** *supra*, it was held

that the physical and mechanical processes employed on beach sand to separate the Ilmenite mineral content amounted to beneficiation process resulting in the end product meriting classification under CETH 26140020 as 'Ilmenite upgraded' or 'beneficiated Ilmenite'. Relevant portions in the CESTAT decision are extracted below:

“10. The next contention is that the process adopted by the appellant is to convert Beach sand to processed sand which cannot be termed as processed ore so as to justify classification under 2614 00 20. The process adopted only separates the mineral Ilmenite from the sand and increases the percentage of Ilmenite in the sand. It does not upgrade the main content of Ilmenite Ore, which is Titanium Dioxide- TiO_2 . Beach sand is a heterogeneous mixture of various mineral bearing sands such as Ilmenite sand, rutile sand, etc. The resultant product after the process undertaken by the appellant are at best processed sands and not processed ores to merit classification under 2614 00 20.....

... ..

18. The issue hinges on the point whether the processes employed by the respondent amount to beneficiation so as to hold classification under 2614 00 20. It is apparent that the process is undertaken in an elaborate plant employing a string of various mechanical and physical processes. Revenue is

implying, by referring to CEGAT's decision in Indian Rare Earths Limited v. Commissioner of Central Excise, 2002 (139) E.L.T. 352 (Tri.-Kolkata), that, because no special process including roasting and chemical treatment is carried out, the process does not result in beneficiated Ilmenite. We are unable to appreciate this reasoning because firstly, the citation referred to is on the manufacture and excise ability of the product and not on the issue of classification. Therefore, reference to this citation is clearly misplaced. Secondly, the fact that mechanical and physical processes by themselves can result in beneficiation of an ore is clearly brought out in the Supreme Court decision in the case of Tata Steel (supra).

.....

It is quite clear that beneficiation process (dense media gravity separation and froth floatation) are a physical separation process to separate higher ash coal and lower ash coal, so no chemical changes are there in the coal mineral, as there are no chemical reactions involved during this beneficiation process.

It is undoubtedly clear from this judgment, that the Supreme Court described the physical and mechanical processes undertaken to lower the ash content in coal which processes are described as beneficiation by the Court.

... ..

24. Board Circular 332/1/2012-TRU, dated 17-2-2012 also clarifies that **by beneficiation process the end product of ore is concentrate or upgraded ore** with regard to the Chapter notes of Chapter 26.

.....

25. We find from the order passed by the Coordinate Bench in the case of V.V. Minerals the process undertaken by the appellant in that case is the same as in the present case. Revenue has not put forth any evidence to indicate that the processes are not identical.....”.

9.1.7 We see no conceivable reason to take a different view. Further, we also note that though Note 4 of Chapter 26 says ‘In relation to products of this chapter, the process of converting ores into concentrates shall amount to ‘manufacture’” strangely, the term ‘concentrates’ is not defined in the CETA, 1985. HSN Explanatory Notes under Chapter 26 says “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”. Thus, as per the Explanatory

Notes, Concentrates are ores / beach sands from which all foreign matters have been removed by special treatments, only to facilitate further metallurgical operations or to ensure easy/economical transport. We, therefore, do not accept the contention of the Appellant that the special treatments mentioned in the Explanatory Notes obliges chemical treatment or roasting so as to ensure upgradation or augmentation of purity in the mineral sand. In this case, admittedly, the physical and mechanical processes carried out by the Appellant result in separation of valuable rare mineral sands from the ordinary sand and the final volume of recovery of such valuable rare minerals is stated to be around 10% of the beach sand dredged out or imported. Thus, the processes carried out by the Appellant not only aid further metallurgical operations but also ensure economical transport, thereby meeting the definition of the term "concentrates" as above.

9.1.8 In view of our above observations, we have no difficulty in holding that the processes carried out resulted in emergence of mineral Concentrates exigible to duty under CETH 26140020.

Issue (ii)

9.2.1 We find that for disallowing the Appellant's claim for exclusion of clearances made to 100% EOUs, it is alleged in para 10 of the SCN that no Form CT-3 was received from the EOUs to clear the goods without payment of duty under Notification No.22/2003-CE without which exemption would not be applicable; and further there was no documentary evidence for receipt of materials at buyers' end. In para 32.2 of the Impugned Order, the Commissioner while dealing with this issue records a finding that *'...they have been in the field of manufacture of excisable goods since 1994; they have floated other companies including an EOU; (therefore) Appellant's plea of not-following the procedure due to bona fide belief that they were not within Central Excise net could not be believed as it is nothing but cover-up of their wilful intent to evade duty payment; and the certificates given by 100% EOUs with proof of receipt of raw materials confirms conversion and sale of concentrates...'*

9.2.2 There is no dispute in this case that the process of conversion of 'ores' into 'concentrates' was construed as a process of manufacture for purpose of levy w.e.f. 01.03.2011 by insertion of Note 4 in Chapter 26. Such

conversion did not attract levy before that date. Oblivious to the changes made in the Tariff, Appellant continued to clear the goods as done earlier. Answering a specific question as to whether he was aware of the fact that concentration of minerals attracted duty from 01.03.2011, Mr. Palani Selvam, Partner in his statement dated 04.03.2015, besides replying in the negative has admitted that even government units like M/s.IRE Limited and M/s.KMML (located in Kerala) from whom they have been making purchases did not charge Excise duty before June 2012. Answering another question as to why he started paying duty from June 2012, he has stated that the duty involvement was huge and the government companies started collecting Excise duty from June 2012. He also deposed in the statement that *'...what they were doing was ore-dressing; only when the atoms or molecules of natural/beach mineral is treated with heating or chemical treatment, they become concentrates; there had been a dispute between the department and M/s IRE for more than 4 decades for classification of ores and concentrates; even after purification of beach minerals, they remained as minerals only; and they started paying duty from June 2012 after amending existing RC by including the concentrated minerals...'*

9.2.3 There is no dispute about the fact that there has been a prolonged litigation as to whether physical or mechanical processes carried out to merely segregate the valuable rare minerals from the mined ore, without upgradation or augmentation of purity of the mineral, would result in 'manufacturing' process liable to Excise levy. In the following cases, CESTAT Bench has held that since the process of separation of mineral did not result in change of any chemical structure of the mineral and since they remained only as minerals, no manufacturing process took place.

- (i) **Indian Rare Earths Limited** –
2002 (139) ELT 352 (Tri.-Kol)
- (ii) **Steel Authority of India Limited** -
2003 (154) ELT 65 (Tri.-Kol)

Departmental Appeals filed against the CESTAT decisions in both the cases were dismissed by the Hon'ble Supreme Court. Though these decisions were rendered in the context of Section 2(f) of the CEA, 1944 as to whether the processes resulted in any manufacturing activity, yet, the issue involved was whether identical processes carried out for mineral separation resulted in the resultant product being called as 'concentrates'. In the case of **M/s.Classic Microtech Private Limited** *supra*, Co-ordinate Bench of

CESTAT at Ahmedabad considering an issue under identical circumstances and in the context of insertion of Note 4 to Chapter 26 of CETA, 1985 has held that the items imported were Zirconium ore/sand and did not fall into the category of 'concentrates'. This decision was rendered on 31.07.2012 based on chemical test reports. It is also not in dispute that the ignorance of change in tariff was not confined to the Appellant alone as government units from whom Appellant made purchases were equally unaware of the changes made in the Tariff and they started paying duty only from June 2012 prompting the Appellant to follow suit. We also find from the amended Registration Certificate dated 09.10.2012 issued by the Assistant Commissioner of Central Excise, Kovilpatti Division that the Appellant submitted an application to the department on 22.08.2012 for inclusion of various items including the items under dispute, for manufacture after they became aware of insertion of Note 4 in Chapter 26 of the CETA, 1985. The amendment sought and carried out did not spur the officers into action and thus they also remained unaware of the changes in the Tariff till the Audit Report in the year 2014 pointed out the same. Therefore, there are enough reasons to believe that but for the payment of duty from June 2012 by the Appellant, even

the audit team would not have noticed the non-payment of duty and hence, as rightly pointed out by the Appellant, answering a reference from their 100% EOU, Assistant Commissioner of Customs, Tuticorin, vide letter dated 13.01.2017 has confirmed that after separation of impurities from the imported sand containing minerals, the Ilmenite exported by the Appellant having not undergone any processes, fell for classification under CTH 26140010 as 'Ilmenite unprocessed'. Thus, the jurisdictional Customs officer was also of the view that mere separation of impurities did not result in processed mineral or concentrate.

In the light of our above discussions, we are of the clear view that non-payment of duty was due to the Appellant either being unaware of the liability in view of change in Tariff or that even after insertion of Note 4 in Chapter 26 of the CETA, 1985, they were under the *bona fide* belief and not blind belief, that no liability to duty arose as the processes carried out did not result in conversion of sand into concentrates for the reasons stated above.

9.2.4 We also take note of the fact canvassed that either being unaware of the changes in the Tariff entry or under the *bona fide* impression that the processes did not result in

any manufacturing activity even after insertion of Note 4 in Chapter 26, the Appellant continued to clear the goods as was done earlier, on the belief that no liability to duty arose. The question of following procedures like CT-3 would arise only when the goods were subjected to duty or when the Appellant knew that the goods were dutiable. Under these circumstances, alleging that non-compliance with the procedure would result in denial of benefit, amounts to compelling the Appellant to follow a procedure which is impossible to comply with. Hence, applying the legal maxim *Lex non cogit as impossibilia* meaning 'the law does not compel a person to do what is impossible' and also for the reason that we are more than convinced in this case that there was sufficient cause for the Appellant for not having followed the procedures associated with clearances to 100% EOUs, we hold that not following the procedures cannot result in the Appellant losing the benefit of duty-free clearances. Consequently, we categorically reject the finding of the Commissioner that not following the procedure due to *bona fide* belief that the goods were not dutiable was a ruse adopted by the Appellant to evade duty payment. We also note that these procedures have been put in place to ensure that the goods despatched are used for the intended

purposes. One of the reasons assigned in the SCN for denial of benefit was that there was no documentary evidence to show receipt of goods at buyers' end. We find that responding to a communication dated 28.10,2014 from the Superintendent of Central Excise, Divisional Preventive Unit, Kovilpatti, the Appellant *vide* its letter dated 04.11.2014, while giving details of clearances, requested to get the same confirmed from the other end / furnished copies of relevant shipping bills. It would have served the cause of justice had the Commissioner caused verification of the details submitted by the Appellant proving receipt of goods by the 100% EOUs instead of sticking to technicalities.

Issue (iii)

9.3.1 On being asked to furnish the details of clearances, the Appellant appears to have given the details with break-ups *vide* their letter dated 11.05.2005. It was the contention of the Appellant that once the clearances were made to 100% EOUs and 'as such' sales were excluded from the turn over, the value of clearances would be within the exemption limit of Rs.1.5 crores thereby entailing no duty liability. Respondent, however, rejected the claim of the Appellant to exclude 'as such' clearances on the grounds that they were sold to manufacturers of electrodes for whom

concentrated Rutile and Ilmenite ores were one of the raw materials; (therefore) the goods removed to manufacturers of electrode were concentrates and only processed and concentrated minerals ought to have been cleared to electrode manufacturers. In the first place, the assertion that only concentrated minerals were for use in electrode manufacturing as raw materials is a subjective opinion and has no technical back-up, as against which, the Appellant has produced a letter from an electrode manufacturer disputing this assumption. Further, the Department itself is not sure as to whether materials were sold as such or after being processed in view of the use of the expression '**ought to have been cleared**'. It is settled law that on assumptions and presumptions, allegations cannot be levelled and, in any case, the allegations how-so-ever strong may be, cannot take the place of evidence/proof. When the Department assumes that the clearances were not 'as such' removals as claimed but processed / dutiable goods, it is for the Department in the first place to discharge the onus by adducing proof to that effect, but the SCN merely levelled allegation sans any evidence. When the Department suspected that only processed minerals ought to have been removed to the manufacturers of electrodes disguising such

dutiable removals as 'as such' clearances i.e., raw un-processed or non-concentrated minerals, nothing prevented the Department from conducting proper investigation to sustain the allegation. We hence find that SCN having been issued only on 01.04.2016, there was adequate time for the Department to conduct investigation as to whether un-processed or processed mineral sand was sold to the manufacturers of welding electrodes. However, no investigation was ever attempted, to take it to its logical end. This should be viewed in the context of the Appellant's submission that 'as such' removals on and from 08.06.2012 were never doubted/questioned and the Appellant's claim for refund of SAD was also sanctioned by the Department, thereby confirming 'as such' removal of imported sand. In para 33.2 of the Impugned Order, the Commissioner records a finding that: *opinion obtained can at best be regarded as the view specific to his product; this suggestion in the SCN is not the main basis for confirming the demand; and the demand merits confirmation for the detailed reasons given.* Once it is accepted that opinion might apply to their product alone, as rightly contended by the Appellant, the benefit of exclusion for 'as such' clearances should have at least been extended to that particular manufacturer.

It does not stop with that; a question arises as to why the same should not be applied for other electrode manufacturers in the absence of the Department proving the process of manufacture of others being different. Further, we fail to understand as to what the Commissioner wants to convey by saying that this suggestion in the SCN is not the main basis for confirming the demand and there are other reasons. We do not find any other basis for this demand and also find that this issue is not dealt with anywhere else in the Impugned Order. We therefore hold that the Commissioner has rejected the claim for exclusion without adequate reasoning.

Issue (iv)

9.4.1 In para 14 of the SCN, it is alleged that the Appellant manufactured concentrates attracting Excise levy from 01.03.2011, suppressed the fact of manufacture of goods and removed them clandestinely; this came to notice through audit; and but for the timely action taken by the Department, the evasion would have gone unnoticed. In para 2 of the SCN, it is alleged that the Appellant did not declare the manufacture and clearance of Titanium ores and concentrates ever before in the ER-1 returns filed by them.

9.4.2 The word 'suppression' implies deliberate withholding of information with intent to avoid duty-payment. In this case, as already discussed by us while considering Issue (i) that the Appellant had a *bona fide* and genuine belief that the activities undertaken by them, namely, separating the mineral from ores/beach sand did not amount to 'manufacture', and neither could the resultant product be called as 'concentrates' in the absence of the same subjected to roasting or chemical treatment so that there was upgradation or augmentation of purity, whereas in this case the chemical structure remained the same both before and after processing. Risking repetition, we record the fact that *bona fide* belief as afore-said resulted in the Appellant not disclosing either the process of manufacture or non-payment of duty on mineral sand (concentrates) cleared. Therefore, the charge that the Appellant resorted to suppression to evade duty payment is bereft of any merit or any evidence and hence, unsustainable. We are surprised to note that Appellant has been charged even with clandestine removal of goods. Clandestine removal means illicit removal of goods which have not been brought on record. Here, there is neither an allegation that the Appellant did not account for the goods in their books of accounts nor is it the case of the

Revenue that the clearances of the un-accounted goods took place without documents covering their removal. Further, as rightly argued by the Appellant, since there was not even an allegation in the SCN that dry-processing facility available in the 100% EOU was misused for clandestine clearance, we set aside the findings of the Commissioner to this effect. Therefore, we outright reject the charge of clandestine removal of goods.

9.4.3 Appellant is a registered unit for manufacture of various items even prior to 01.03.2011 on which date, **the insertion of Note 4 in Chapter 26 took place, construing the process of conversion of 'ores' to 'concentrates' as amounting to 'manufacture'**. The process of manufacture remained the same both before and after 01.03.2011. The Department should have been in possession of an adequate database as to the activities being carried on in the registered units. This being the factual position, the Department should have, in right earnest, written to the Appellant as to the changes taken place in the Tariff and asked them to start paying duty, more so when the motto of the present tax regime is 'ease of doing business' and not catching an un-suspecting Assessee later and slapping the charge of duty-evasion, as is done in

this case. Further, having been in possession of data pointing to existence of a unit carrying on a manufacturing process in view of insertion of Chapter Note, nothing prevented the Department from scheduling the audit programme soon after the changes took place in the Tariff, instead of waiting for nearly 3 years. The belated conducting of audit is itself unexplained, for which the Appellant cannot be blamed. Therefore, the charge in the SCN and the finding in the Impugned Order that but for the audit, the non-payment of duty would not have come to light is a very lame excuse and cannot certainly be a sole/justifying factor for invoking the extended period of limitation.

(Emphasis added)

9.4.4 As the Appellant was under the *bona fide* belief that the goods were non-dutiable, the same was not declared in the statutory returns. However, they started paying duty from 08.06.2012 which should have come to the knowledge of the Department and the returns filed would have also reflected the same. It is not understood as to why the Department did not act immediately thereafter and wait for the audit report till 2014. There is also no dispute that consequent to the insertion of Note 4 in Chapter 26,

Appellant got the Registration certificate amended in the month of October 2012 by submitting an application dated 22.08.2012 to this effect. This being the factual position, nothing is brought on record as to why no action was taken immediately by the Department for past clearances (01.03.2011 to 07.06.2012), especially when the Appellant started paying duty from 08.06.2012, despite the existence of a dedicated preventive unit at the divisional level. The Appellant exported goods for a value of Rs.86.08 lakhs and the in-house stuffing took place under Departmental supervision but non-payment of duty was not noticed. The conclusion is inescapable that even the officers were blissfully ignorant of the changes made in the Tariff despite appellant remitting duty, thereby failed to take lead to investigate as to why the Appellant started paying duty from 08.06.2012 all of a sudden.

9.4.5 There is a vehement plea from the Appellant that the issue involved being interpretational, extended period cannot be invoked. The CESTAT decision relied by the Commissioner is reported in 2016 (338) ELT 274 (Tri.Kol) relating to **M/s.Indian Rare Earths Limited**, as discussed in the preceding portions of this Order, prior to this decision of CESTAT which was rendered on 29.02.2016, the decisions of

CESTAT in the cases of **M/s Indian Rare Earths Limited Vs CCE** [2002 (139) ELT 352 (Tri.-Kol)], **CC & CCE Vs M/s Steel Authority of India Limited** [2003 (154) ELT 65 (Tri.-Kol)] as affirmed by the Hon'ble Supreme Court and **M/s.Classic Microtech Private Limited Vs CC Ahmedabad** decision dated 31.07.2002 [2012 (285) E.L.T. 418 (Tri. - Ahmd.)] favouring the Appellant held the field. No Appeal appears to have been filed by the Department challenging the CESTAT decision *supra* in the case of **M/s Classic Microtech Private Limited**. No doubt the CESTAT decision in the case of **M/s.Malu Electrodes Private Limited** *supra* which followed the ratio of the decision of CESTAT in the case of **M/s.Classic Microtech Private Limited** *supra* was set aside by remand by the Hon'ble Supreme Court. But a later decision of CESTAT on the same issue in the case of **M/s.Astron International Vs CC Ahmedabad** [2015 (321) ELT 517 (Tri.-Ahmd.)] and which followed the CESTAT decision in the case of **M/s.Classic Microtech Private Limited** *supra* was taken on Appeal by the Department and the Hon'ble Supreme Court merely admitted the Civil Appeals, *vide* 2015 (321) ELT A204 (SC). In the case of **M/s Rungta Mines Limited & Others** [2016 (338) E.L.T. 454 (Tri. - Kolkata)], a co-ordinate Bench

of CESTAT, holding the issue against the unit on merits, accepted the issue as being interpretational. Civil Appeal (No. 5957 of 2016) filed against the same on merits was admitted by the Hon'ble Supreme Court. Therefore, it is clear that the issue arising for decision in this case is not free from doubt, nay, litigation.

9.4.6 The Commissioner in para 22.8.5 of the Impugned Order records a finding that *"The above mentioned decision of the Hon'ble Tribunal, in my considered view, has settled the issue unequivocally. **Thus, the noticee's argument that chemical treatment or special process including roasting or chemical treatment was not carried in the present process so as to qualify them to be regarded as 'mineral concentrate' does not find support and is liable to be rejected.'***

(Emphasis added)

However, in the case of **M/s.Beach Minerals Company** [(2023) 9 Centax 148 (Tri. -Mad)] on an identical issue the Authorised Representative of the Department argued that-
*"9. The learned AR Shri S. Balakumar appeared and argued for the Department. He supported the findings in the impugned order. **It is submitted by him that the raw***

sand has not undergone any chemical treatment or such other processes and therefore it cannot be said that the Ilmenite is processed Ilmenite. The mineral content remains the same as it existed in the ore Ilmenite before these processes. Upgradation or beneficiation is carried out to enhance the titanium dioxide content upto 95%, by removing impurities such as iron oxide, silica, etc., by roasting and chemical treatment. Only such processes can result in beneficiated Ilmenite. The goods are therefore rightly classifiable under CTH 2614 00 10 and the appellant is liable to pay export duty at the rate of 10%. He prayed that the appeal may be dismissed. Not resting content, Commissioner of Customs, Tuticorin filed a Civil Appeal before the Hon'ble Supreme Court which as already said stood dismissed. As dealt with in the preceding portions of this Order, answering a reference from their 100% EOU as to the applicable rate of duty on the goods exported by them, the Assistant Commissioner of Customs, Tuticorin, vide letter dated 13.01.2017, said that after separation of impurities from the imported sand containing minerals, the Ilmenite exported by the Appellant having not undergone any process fell for classification under CTH 26140010 as

Ilmenite unprocessed liable to export duty @ 10%. Thus, the jurisdictional Customs officer was also of the view that mere separation of impurities did not result in processed mineral or concentrate. Thus, the Department itself adopted 2 different interpretations - one for the purpose of Central Excise levy and another for purpose of export duty. If the issue in this Appeal is not interpretational, we are afraid what else would qualify so?

10. In view of the above, we answer the issues as below:

(i) The process amounts to 'manufacture' and the goods are held to fall under CETH 26140020 of the CETA, 1985.

(ii) Non-compliance with procedures associated with removals to 100% EOUs would not deprive the Appellant of duty-free benefits.

(iii) Appellant's plea to exclude 'as such' clearances from the turnover is accepted.

(iv) Demand confirmed under the extended period of limitation applying Section 11A (4) of the CEA, 1944 is held as unsustainable.

11. In this case, SCN has been issued on 01.04.2016 for non-payment of duty covering the period from 01.03.2011 to 07.06.2012, the entire demand confirmed in the Impugned Order is held as barred by limitation of time. Needless to say, since the demand itself is set aside, that portion of the Impugned Order confirming interest and imposing penalty is also set aside. Thus, the Appeal is allowed with consequential relief to the Appellant.

(Order pronounced in open court on 06.05.2026)

sd/-

(VASA SESHAGIRI RAO)
Member (Technical)

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sd/-

(P. DINESHA)
Member (Judicial)