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REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH

Dated: **30/11/2015**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **C/A/53497-53498/2015-CU[DB]** dated **04/11/2015**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **129-A(4) of the Customs Act, 1962.**

Asstt. Registrar(CUSTOMS Appeal Branch)

Application	Appeal	Name and Address of Appellant
1	C/374/2009	**COSMOS ELECTODES PVT. LTD.** 161, BAIKUNTHDHAM COLONY INDORE (M.P.)
2	C/375/2009	**KONARK ELECTRODES,** 161, BAIKUNTHDHAM COLONY INDORE (M.P.)
		Name and Address of Respondent
3		-C.C.E. INDORE Manik Bagh Palace, Post Box No. 10, Indore 452001 (M.P.)
4		**-C.C.E. INDORE** Manik Bagh Palace, Post Box No. 10, Indore 452001 (M.P.)

Other Appellants and Respondents as per Annexure

Copy To

5 Advocate(s) / Consultant(s):

Alok Barthwal,Adv
227-B&C BASNI TRADE CENTER,
581/5,M.G.ROAD,
INDORE,
MADHYA PRADESH

6 Additional Party's Name & Address :

7 Bar Association, CESTAT, Delhi

8 Director Publications, Customs, Excise. I.P. Estate, Delhi

9 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

10 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

11 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

12 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

13 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

14 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

15 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

16 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

17 C.D.R. **18** Office Copy **19** Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. I

Date of hearing / decision : 04.11.2015

For Approval and Signature:

Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr. R. K. Singh, Member (Technical)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 26 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

Customs Appeal Nos. 374 - 375 of 2009

(Arising out of order-in-Appeal No. IND-I/27/2009 & IND-I/28/2009 both dated 12.02.2009 passed by the Commissioner (Appeals) Customs & Central Excise, Indore).

M/s Cosmos Electrodes Pvt. Ltd. Appellant
M/s Konark Electrodes

Vs.

CCE, Indore Respondent

Appearance:

Shri Manish Saharan, Advocate for the appellant-assessee
Sh. Amresh Jain, DR for the Revenue

Coram:

Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr. R. K. Singh, Member (Technical)

Final Order Nos. 53497 - 53498/2015

Per: R. K. Singh:

This appeal has been filed against order-in-appeal dated 12.02.2009 which upheld the order-in-original dated 30.09.2008 in terms of which the appellant was denied the benefit of Notification No. 4/2006-CE. dated 01.03.2006 on "rutile welding grade" and confirmed Customs duty demand of Rs. 89,665/- alongwith interest. Penalty of Rs. 1,000/- was also imposed. The facts of the case, in brief, are as under:

> The appellant imported rutile welding grade and claimed benefit of Notification No. 4/2006-CE for the purpose of CVD. The lower adjudicating authorities held that as per Chapter Note-2 of Chapter 26 the impugned goods did not qualify to be called "ore" and therefore benefit of Notification No. 4/2006-CE for the purpose of levy of CVD was not admissible.

2. The appellant has contended that the goods imported by it were classified under heading 26.14 of Customs Tariff and Chapter Note-2 of Chapter 26 of Customs Tariff in no way implies that the goods would not be categorised as "ore" for the purpose of Notification No. 4/2006-CE.

3. Ld. DR on the other hand, stated that the lower adjudicating/ appellate authorities have analysed the issue in the light of Chapter Note-2 of Chapter 26 of Customs Tariff and have come to a finding that the impugned goods cannot be called "ore" for the purpose of granting exemption Notification No. 4/2006-CE.

4. We have considered the contentions of both sides. We find that Notification No. 4/2006-CE inter-alia unconditionally exempts ores falling under chapter heading 2601 to 2617. Chapter Note-2 to Chapter 26 states as under:

> "(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. Heading 2601 to 2617 do not, however, include minerals which have been submitted to processes not normal to the metallurgical industry*".

We do not find any evidence in the orders of the lower authorities that the impugned goods had been submitted to processes not normal to the metallurgical industry. Further, the goods were classified by Customs authorities under sub-heading 26140031. Heading 2614 is reproduced below:

"*Chapter heading 2614 covers*
-Titanium ores and concentrates.
261400 -Titanium ores and contrates
2614 00 10 - Limenite, unprocessed
261400 20 - Liminite, upgraded (beneficiated limonite including limonite ground)
- Rutile
2614 00 31 – Rate earth oxides including rutile sand
2614 00 39 – Others
2614 *00 90 – Others*"

As is evident, CTH covers "ores" and "concentrates"only.

It is seen that nowhere in the lower adjudicating authorities orders it is brought out that the goods imported were concentrates. If the goods were not concentrates and were classified under 2614, they had to be "ore". Chapter Note-2 of Chapter 26 clearly states that it is not necessary that for the goods to be classified as ores they have to be necessarily intended for metallurgical purposes. From this it axiomatically follows that there was no basis for the lower authorities to deny the benefit of Notification No. 4/2006-CE when they have themselves classified the impugned goods under 2614 and at no stage even hinted that the goods were "concentrates".

5. In the light of aforesaid analysis, the impugned order is not sustainable. Therefore, the impugned order is set aside and appeal allowed.

(Justice G. Raghuram)
President

(R. K. Singh)
Member (Technical)

Pant