IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 75729 of 2016

(Arising out of Order-in-Original No. BSR-EXCUS-002-COM-011-15-16 dated 30.11.2015 passed by the Commissioner of Central Excise, Customs and Service Tax, Bhubaneswar-II, C.R. Building, Rajaswa Vihar, Bhubaneswar – 751 007, Odisha)

M/s. Odisha Mining Corporation Limited **: Appellant**
OMC House, Bhubaneswar – 751 001 (Odisha)

VERSUS

Commissioner of Central Excise, Customs and Service Tax **: Respondent**
Bhubaneswar-II Commissionerate,
C.R. Building, Rajaswa Vihar, Bhubaneswar – 751 007 (Odisha)

APPEARANCE:

Shri Jnanesh Mohanty, Advocate,
Smt. Shreya Mundhra, Advocate
For the Appellant

Shri S.K. Jha, Authorized Representative,
For the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 77196 / 2025

DATE OF HEARING / DECISION: 05.08.2025

ORDER: [PER SHRI ASHOK JINDAL]

The appellant is engaged in the activity of crushing and screening of iron ore lumps. As per Notification No. 19/1988-CE dated 01.03.1988, "ores & concentrates" falling under Chapter 26 of the Central Excise Tariff Act, 1985, were exempt from payment of duties. Subsequently, vide Notification No. 19/1996-CE dated 23.07.1996, the Notification No. 19/1988-CE dated 01.03.1988 was rescinded. Thereafter, by way of Notification No. 08/1996-CE dated 23.07.1996, only "ores" were exempt from payment of duty and "iron ore concentrates" became excisable, leviable to central excise duty thereon, with effect from 23.07.1996.

2. In view of the above set of facts, a Show Cause Notice was issued to the appellant on 22.01.1997, to demand excise duty on the activity undertaken by the appellant viz., crushing and screening of iron ore lumps. It was alleged that the above activity undertaken by the appellant amounts to manufacture i.e., after crushing, grinding, screening and washing, the same became 'iron ore concentrates', on which the appellant is liable to pay duty in terms of Notification No. 08/1996-CE dated 23.07.1996.

2.1. The demand proposed in the said Show Cause Notice was confirmed vide Order-in-Original dated 13.03.1998.

3. At this stage, the said issue was considered by this Tribunal in the case of *Commissioner of Cus. and C.Ex., Jamshedpur & Bhubaneswar-II v. Steel Authority of India Ltd. [2003 (154) E.L.T. 65 (Tri. – Kolkata)]* wherein it was held that subjecting the mined iron ore to the processes of crushing, grinding, screening and washing do not result in the manufacture of a different commercial commodity to be liable for levy of central excise duty.

4. Thereafter, on the basis of the aforesaid decision, the Order dated 13.03.1998 came to be set aside by the Ld. Commissioner (Appeals) vide Order-in-Appeal dated 10.03.2003.

4.1. The Revenue preferred an appeal against the above order before this Tribunal, which was rejected vide Order dated 22.04.2004.

4.2. Subsequently, the said order of this Tribunal was challenged by the Revenue before the Hon'ble Apex Court.

4.3. During pendency of the appeal before the Hon'ble Apex Court, the Finance Act, 2011 came into force which inserted Chapter Note 4 in Chapter 26 of the Central Excise Tariff Act. The said Chapter Note reads as under: -

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

5. After insertion of the said Chapter Note 4 to Chapter 26 of the Central Excise Tariff vide the Finance Act, 2011, the issue that arose was as to whether iron ore lumps and fines were dutiable as 'iron ore concentrates' when subjected to processes such as crushing, screening, grinding, washing, etc., or not.

6. Instructions were issued by the C.B.E.C. vide Instruction dated 17.02.2012 clarifying that *"no special treatment is involved in the crushing and screening of iron ore and the end product can be termed as a concentrate only when the grade of ore is sufficiently improved through beneficiation".*

7. Thereafter, three Show Cause Notices were issued to the appellant, covering the period from May, 2008 to March, 2014, for recovery of central excise duty on the allegation that crushing, screening and grinding are processes for converting iron ore into concentrates and therefore, tantamount to manufacture. Subsequently, another Show Cause Notice was issued for the period from April 2014 to September 2014, on the same lines. Accordingly, by

way of the said Show Cause Notices, it was alleged that the appellant is liable to pay duty thereon.

8. The matter was adjudicated vide the impugned order, the demand of duty has been confirmed, along with interest and penalty.

8.1. Aggrieved from the said order, the appellant is before us.

9. The Ld. Counsel appearing on behalf of the appellant submits that as per the clarification issued vide Circular/Instruction dated 17.02.2012 the activity of crushing and screening does not amount to 'manufacture' as the same do not result in the end product being 'concentrates' falling under Chapter 26 of the Central Excise Tariff Act. Therefore, it is his contention that no duty is payable by the appellant.

10. On the other hand, the Ld. Authorised Representative of the Revenue has argued that the said processes of crushing and screening are admittedly employed by the appellant on iron ore to render the same fit for use in the steel industry and their economic transportation from mines to their factory; therefore, he contends that the appellant is liable to pay excise duty.

11. Heard the parties.

12. We find that the activity undertaken by the appellant is not in dispute i.e., the appellant has employed the processes of crushing and screening only to raise iron ore. The iron ore so raised by the appellant is not subjected to any process of beneficiation and/or any special treatment which removes any part or all of the foreign matter contained in it and only their size is reduced and

segregation thereof, which is as per the industrial requirement.

12.1. We find that in the case of *Hind Metals & Industries Pvt. Ltd. v. Commissioner of C.Ex., Cus. and S.T., Bhubaneswar-II [2018 (10) G.S.T.L. 547 (Tri. – Kolkata)],* this Tribunal has held that the said activity is liable to Service Tax and does not amount to 'manufacture'. For the sake of ready reference, paragraphs 6 and 7 of the said order are reproduced below: -

> *"6. From the perusal of the salient features of the agreement, it is evident that the nature of activity carried out by the appellant for the mine owner is covered by the definition of mining service under Section 65(105) sub-clause (zzzy). It is further seen from the agreement that the appellant is required to employ workmen, providing tools etc. and required to undertake mining activity of individual mines. It is also required to undertake all activities in connection with mining of iron ore and pay necessary taxes and duties. The agreement specifically lists out activities like mine development, sizing, crushing and screening of material handling etc. and other allied activities connected with mine and mining operation. It is further seen that the payment for the iron ore fines cleared by the appellant will be received by the mine owner and the appellant's dues to the extent of 95% will be paid by the Mine owner. Sub-clause (zzzy) of Section 65(105) of the Finance Act, 1994, defines the taxable service under the category of "Mining of Mineral Oil and Gas service" as the service to be provided to any person in relation to mining of mineral oil or gas. It is further seen that the mine owner ("who can be considered as service receiver") pays consideration to the service provider. Consequently, the appellant will be liable to pay service tax on the value of taxable service received by them during the period.*
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> *7. The main argument advanced on behalf of the appellant is that the activities undertaken are not to be considered as service but are rendered towards production/manufacture of excisable goods viz. Iron ore which are specified under Chapter 26 of the First*

Schedule to Central Excise Tariff Act and attracts excise duty, even though exempted. From the nature of the contract, it is evident that the activity carried out is one of mining of iron ore and not manufacture thereof and hence service tax is liable to be paid. The argument put for by the appellant that such activities are to be considered as manufacture of iron ore is nothing but an after thought. In any case, no excise duty has been paid by the appellant on the iron ore fines."

12.2. In view of the above, we hold that demand of duty against the appellant is not sustainable. Consequently, no penalty can be imposed on the appellant.

13. In the result, the impugned order is set aside and the appeal is allowed, with consequential relief, if any.

(Operative part of the order was pronounced in open court)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd