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

REGIONAL BENCH – COURT NO. 2

Excise Appeal No. 76180 of 2016

(Arising out of Order-in-Original No. BSR-EXCUS-002-COM-018-15-16 dated 04.03.2016, issued on 08.03.2016, passed by the Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-II, C.R. Building, Rajaswa Vihar, Bhubaneswar – 751 007, Odisha)

M/s. Khatau Narbheram & Co. **: Appellant**
91A/1, Park Street,
Avani Signature, 6th Floor,
Kolkata – 700 016 (West Bengal)

VERSUS

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

APPEARANCE:

None for the Appellant

Shri Mihir Ranjan, Special Counsel, for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 77774 / 2025

DATE OF HEARING / DECISION: 21.11.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

No one has appeared on behalf of the appellant.

2. Considering the fact that the matter pertains to the year 2016 and the issue involved is in a narrow compass, with the consent of the Ld. Special Counsel representing the Revenue, we have taken up the appeal for disposal on the basis of the available records.

3. The facts of the case are that M/s. Khatau Narbheram & Co., 91A/1, Park Street, Avani Signature, 6th Floor, Kolkata – 700 016 (West Bengal) [hereinafter referred to as the "appellant"] is engaged in mining and sale of Iron Ore lumps and fines at their mines since last 57 years. The mines are located at Roida, Dist.- Keonjhar in the State of Odisha. The Iron Ore raised by the appellant from their mines have Ferrous (Fe) content between 60% to 62%, which do not require concentration, being high grade Iron Ores.

3.1. The Iron Ore Lumps (5 mm-18 mm)/ Fines (below 5 mm) produced by the appellant are absolutely exempted under Notification No. 4/2006 CE dated 01.03.2006 (Sl. No-4) (up to 16-03-2012] and Notification No. 12/2012- CE dated 17.03.2012 [Sl.No.-56] w.e.f. 17.03.2012.Duty in the instant case is demanded on "Lumps" of 5-18 mm/10-40 mm and Fines (below 5 mm).

4. The appellant, under the Mines & Mineral (Regulation & Development) Act, 1957, has filed their returns regularly with the mining authorities showing production and sale of Iron Ore Lumps/Fines. As per the said returns, which are accepted by the Mining authorities, the production of Concentrate is Nil. From the Mining Plan and Pollution Consent Order placed on record, it appears that there is no concentration plant with the appellant.

5. The appellant, in the process of mining, first obtains Run of Mines (ROM) consisting of Iron Ore Boulders which is transported to Crushing and Screening Plant inside the mining lease hold area where it is "crushed and screened" to required sizes i.e., 5-18mn and 10-40 mm. Iron Ore of 5-18 mm is purchased by Sponge Iron manufacturers and Iron

Ore of 10-40 mm is purchased by Blast Furnace units. In the process of crushing and screening, Iron Ore Fines falling under SH.2601.11.49 are generated which are sold out without carrying out any further process.

6. It is the case of the appellant that they do not undertake any "special treatment" or "Beneficiation Process or any process of concentration of Iron Ore for removal of "foreign matters and/or enrichment of Iron Ore. They are not having any facility/infrastructure for special treatment to manufacture of Iron Ore Concentrates (SH.2601.11.50). The appellant has not installed any Beneficiation/concentration plant for any special treatment. It is also not the case of the Department that the appellant has installed any beneficiation/concentration plant. It is neither case of the Department that the appellant employs any special treatment for removal of foreign matter from the Iron Ore. It is undisputed case of the Department that the appellant only carries out "Crushing and Screening" i.e., size reduction and size separation process.

7. In the process of Beneficiation for concentration of Iron Ore, "foreign matters such as earth, silica, alumina etc. are removed from Ores by "Special Treatment" for enrichment of Ferrous (Fe) content of the Iron Ore. It is submitted that Concentrates are goods of intensified strength. In the present case, Concentration is carried out with low grade Iron Ores (with 35% to 45% Fe) for removal of foreign matters with a view to enrich it up to 60% to 65% of Fe for use in further metallurgical operations and/or economic transport. If not concentrated, then the

earth, silica, aluminium etc. in the Iron Ore have also to be transported embedded in Iron Ore which would make it uneconomical. The rest of gangue matters(earth etc.) beyond 65 %can only be removed in the process of Steel making. The purpose of Beneficiation is to convert low grade Iron Ore (with 35%-40% Fe) into 60% to 65% Fe Iron Ore. The Iron Ores produced in the mine of the appellant are having Fe of 60% to 62%, which are already high grade iron ore and as per the appellant do not require any concentration.

8. Four Show Cause Notices were issued to the appellant proposing to demand central excise duty amounting to Rs.137,09,96,419/-, along with interest and penalty.

9. The above said Notices were adjudicated by the Ld. Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-II Commissionerate, who passed the Order-in-Original No. BSR-EXCUS-002-COM-018-15-16 dated 04.03.2016 [hereinafter referred to as the "impugned order"] confirming the demand of Rs.130,07,05,638/-, along with interest, and dropping the rest of the demand of Rs.7,02,90,781/-. The ld. adjudicating authority also imposed penalty equal to the amount of central excise duty demanded, under Section 11AC of the Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002.

9.1. In the impugned Order, the Ld. Commissioner has held as follows: -

(i) The appellant is engaged in crushing & screening of Iron Ore;

(ii) The process of "Crushing & Screening" are sufficient enough to make the ores fit for economical transportation and use in metallurgical industry;

(iii) Iron Ore contain foreign material called gangue in the form of mud and loose earth. During crushing and screening the mud and loose earth attached to the ore get crushed with the ore and grinded and blown away with the wind and thereby satisfy the definition in the HSN, "removing a part or all of foreign matter"

(iv) The process of concentration by way of enriching the Iron Ore with Ferrous content is not relevant in the present facts and circumstances. It is an admitted fact that the process of enriching Iron Ore with Fe content, if any, has nothing to do with the process of bringing about Iron Ore Concentrate

(v) The appellant is not entitled to exemption under Notification No.4/2006-CE dated 01-03-2006(Sl.No.4)

9.2. Aggrieved by the said order, the appellant has filed the present appeal.

10. Heard the Ld. Special Counsel appearing on behalf of the Revenue and perused the records of the case.

11. The issue involved in the instant case is whether the process of "Crushing and Screening" carried out on Iron Ores (falling under SH.2601.11.11/SH.2601.11.12/SH.2601.11.49) raised from their mines by the appellant amounts to manufacture of "Iron Ore Concentrates" falling under SH.2601.11.50 as per Chapter Note 4 under Chapter 26 of the CETA [introduced w.e.f. 01-03-2011 by Finance Act 2011], or not.

12. From a perusal of the records, we find that the appellant has employed the process of "Crushing & Screening", by which there is no conversion of 'ores' into 'concentrates'. In this regard, we observe that the burden of proof is squarely on the Department to establish that (i) there has been manufacture of Iron Ore Concentrate by means of "Crushing & Screening", (ii) the said process of "Crushing and Screening" is a special treatment in metallurgy and (iii) that in Metallurgy, "Crushing & Screening" is used to remove foreign matter from Iron Ore for the purpose of manufacture of Iron Ore concentrate. However, we find that the Department has failed to discharge the burden of proof cast on it in the present case. The department has not brought in any evidence to substantiate the allegation that the Appellant has undertaken the process of conversion of 'ores' into 'concentrates'. Therefore, we are of the view that the processes of crushing and screening, which cannot remove foreign matter and cannot enhance ferrous content cannot be termed as a process of "concentration" and does not amount to any "special treatment". It is to be noted that processes of crushing and screening are primarily processes of size reduction and separation. Thus, without employment

of 'special treatment' and 'removal of foreign matters', there cannot be any concentration.

12.1. As per Technical Literature Beneficiation consists of following processes: -

> "1.4.2 Beneficiation Methods
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> (i) milling (crushing and grinding);
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> (ii) washing;
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> (iii) filtration;
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> (iv) sorting;
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> (v) sizing;
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> (vi) gravity concentration and/or,
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> (vii) magnetic separation and/or;
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> (viii) flotation; and/or
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> (ix) agglomeration (pelletizing, sintering, briquetting, or nodulizing).

12.2. We find that the Circular No.332/1/2012-TRU dated 17-02-2012 also clarified that in Concentration, processes of (i) milling, (ii) hydraulic separation (iii) magnetic separation (iv) floatation (v) concentrate thickening are undertaken. In the present case, we find that there is no evidence available on record to conclude that the appellant has undertaken the above processes.

12.3. We also take note of the fact that the Ministry of Mines, Govt. of India vide Office Memorandum No. 1712/2012-MV dated 25-01-2012 has clarified that no special treatment is involved in Crushing & Screening of Run of Mines (ROM) to lumps and Fines and the Lumps and Fines are naturally occurring forms of Ore. It has been further clarified that the process of Crushing & Screening of Ore to give different sizes of

Lumps and Fines without further process of beneficiation in the grade of Ores does not amount to producing Concentrate. Till beneficiation of Grade is there, Iron Ore Lumps or Fines produced by Crushing and Screening do not classify as a concentrate for levy of excise duty.

12.4. The said clarification of the Ministry of Mines has been endorsed by the CBEC vide its Circular No. 332/1/2012-TRU dated 17-02-2012 wherein the CBEC has clarified that the levy of excise duty is attracted only in cases where the product meets the definition of concentrate as per HSN Notes i.e. Ores which have had part or all of the foreign matters removed by "special treatment".

12.5. Furthermore, as fairly pointed out by the Ld. Special Counsel for the Revenue, the issue before us in this appeal is no longer res integra as the same stands settled by way of a catena of decisions. The very same issue was analysed by this Tribunal in the case of *M/s. Odisha Mining Corporation Ltd. v. Commissioner of C.Ex., Cus. & S.T., Bhubaneswar-II [Final Order No. 77196 of 2025 dated 05.08.2025 in Excise Appeal No. 75729 of 2016 – CESTAT, Kolkata],* wherein it was held as under: -

> *"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.*
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> *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."

13. Thus, in view of the above discussion and by applying the ratio of the decision cited supra, we hold that the activity undertaken by the appellant in the present case does not amount to manufacture and the same do not result in the end product being 'concentrates' falling under Chapter 26 of the Central Excise Tariff Act. Consequently, the demands confirmed against the appellant in the impugned order, along with interest and penalty thereon, are not sustainable and hence, the same are set aside.

14. In the result, the impugned order is set aside and the appeal is allowed, with consequential relief, if any, as per law.

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

Sd/-

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd