

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH – COURT NO. 1
Excise Appeal No. 75664 of 2016**

(Arising out of Order-in-Original No.05-07/CCE/CEX/RKL/2015-16 dated 30.11.2015
passed by Commissioner of Customs, Central Excise & Service Tax, Rourkela)

M/s Jindal Steel And Power Ltd., : **Appellant**
T.R.B Iron Ore Mines,
P.O.-Tensa, District-Sundergarh, Odisha, Pin-770042.
VERSUS

Commissioner of Customs, Central Excise And : **Respondent**
Service Tax, Odisha
At-Nayabazar, Sector-21, Rourkela-769010, Odisha.

APPEARANCE:

Shri B.L.Narasimhan & Ms. Ekta Jhunjhunwala, Advocates for the Appellant

Shri Mihir Ranhan, Special Counsel for the Respondent

CORAM:

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

FINAL ORDER NO.75224/ 2026

DATE OF HEARING :21.01.2026

DATE OF DECISION:21.01.2026

Order : [Per Shri Ashok Jindal]

The Appellant is in appeal against the impugned order.

2. The facts of the case are that the appellant is engaged in the activity of mining of iron ores from its captive mines located at Tensa, Sundergarh district, Odisha. The iron ores so extracted thereafter undergoes the process of crushing and screening in order to reduce the size of the ores into two categories – i) below the size of 5mm are referred to as 'fines'
ii) within the size of 5mm and 200mm are referred to as 'lumps'.

3. The Appellant was not registered with the Central Excise Department during the relevant period as the sized intro ore produced by it was unconditionally exempt from payment of excise duty under Notification No. 4/2006-CE dated 01.03.2006 which exempts ores of Chapter Headings 2601 to 2617 of the First Schedule to the Central Excise Tariff Act, 1985 ('**CETA**') from the payment of excise duty.

4. Vide the Union Budget of 2011-12, Chapter Note 4 was inserted in Chapter 26 of the First Schedule to the CETA which stated that process of converting ores to concentrates will amount to manufacture.

5. Pursuant to insertion of the said Chapter Note, investigation was initiated by the Department into the processes undertaken by the Appellant and an opinion was framed that the activities of crushing and screening of extracted iron ores amount to manufacture of iron ore concentrates. Accordingly, multiple communications were issued by the Department directing to obtain central excise registration and pay applicable duties, which were duly rebutted by the Appellant.

6. The investigation initiated by the Department culminated into issuance of underlying SCNs vide which demand totalling to Rs. 68,50,06,529/- for a cumulative period of March 2011 to November 2014 was proposed.

7. The said demand was adjudicated by Ld. Commissioner (Rourkela) vide the impugned order dated 30.10.2015 wherein demand to

the tune of Rs. 4,76,54,552/- was dropped observing the same to be in relation to export clearances. However, the demand for the remaining amount, i.e. Rs. 63,73,51,977/-was confirmed.

8. Being aggrieved with such O-I-O, the Appellant is before us.

9. The Ld. Counsel appearing on behalf of the appellant submits that the present issue is no longer res integra-issue settled in favour of similarly placed assesses.

10. The Department vide the impugned order has confirmed the demand against the Appellant holding that the processes of crushing and screening employed on the extracted iron ores liberates the same from gangue materials/ impurities and thereby makes the same fit for use in steel industry as well as for transportation from the mines to the factory. Hence, it has been observed that the resultant product is nothing, but iron ore concentrate and, therefore, liable to excise duty in terms of Chapter Note 4 to Chapter 26 of the First Schedule to the CETA.

11. In this regard, it is pertinent to note that the term 'concentrates' has not been defined in the First Schedule to the CETA. Hence, reference must be made to the definition of the said term given under the HSN Explanatory Notes, reproduced hereunder, for ease of reference:

*"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."*

12. From the above, it transpires that for iron ores to be considered as concentrates, the ores must be subjected to special treatments for removal of foreign matter. The simple mechanical processes of crushing and screening employed on the extracted iron ores which removes some of the loose materials brought along with the ore from the mines, viz. mud, dust, etc., cannot be said to be a process of concentration.

13. It is submitted that pursuant to insertion of Chapter Note 4 to Chapter 26 of the First Schedule to CETA, a representation was filed by Federation of Indian Mineral Industries dated 21.11.2011 before the CBIC, submitting that crushing and screening of iron ore does not amount to manufacture of iron ore concentrate and that the said process should not attract the deeming fiction of manufacture under Chapter Note 4 to Chapter 26. Along with the representation letter, a certificate dated 09.11.2011 obtained from a reputed mining Company, MBE Coal & Mineral Technology India Private Limited was also submitted which stated as follows:

"a) In case of Direct Shippable Ore (DSO) which doesn't require any beneficiation techniques and plant mainly contains Crushing and Screening, the total yield of plant will be 100% and the chemical

characteristics of Feed Material and the Product will be 100% same.

b) In case of Concentration/ Beneficiation, the process requires liberation of mineral particle from gangue by means of Gravitational, Magnetic and other techniques."

14. Thereafter, letter dated 25.01.2012 was issued by the Ministry of Mines to the Ministry of Finance clarifying that mere activities of crushing and screening of iron ore will not amount to concentration for levy of excise duty and seeking issuance of suitable guidelines in this regard.

15. Subsequently, the Tax Research Unit of the Department of Revenue, Ministry of Finance, issued a clarification vide **F. No. 332/1/2012-TRU, dated 17.02.2012**[Pg. no. 28 of the Compilation], which bolsters the submission that mere crushing and screening of iron ore does not amount to manufacture of iron ore concentrates. The relevant extract of the said Circular is given below, for ease of reference:

"2. In Budget 2011, a Note was inserted in Chapter 26 of the First Schedule to the Central Excise Tariff to deem the process of converting "Ores" into "Concentrates" as a process amounting to manufacture. Both ores and concentrates are classifiable under Chapter 26 and while the term 'Ore' is defined in Note 2 of the said chapter, the term 'concentrate' is not. HSN Explanatory

Note spell out the scope of the term "Concentrate" as under :

"For the purposes of Headings 2601-2617, the term 'concentrates' applies to ores which have had part or all of the foreign matter removed by special treatments either because such foreign matter may hamper subsequent metallurgical operations or with a view to economical transport."

From the above definition, it is clear that removal of part or all of foreign material is envisaged for conversion of ores into concentrates. **Ministry of Mines have clarified that no special treatment is involved in the crushing and screening of ore and the end-product can be termed as a concentrate only when the grade of ore is sufficiently improved through beneficiation. Federation of Indian Mineral Industries have also pointed out that several processes (in addition to crushing and screening) such as milling, hydraulic separation, magnetic separation, floatation & Concentrate thickening have to be undertaken for ores to be converted into concentrate.**

3. Hence, it is clarified that the levy of excise duty is attracted only in cases where the product meets the definition of concentrate as per HSN Notes, that is, 'ores which have had part or all of the foreign matter removed by special treatments either because such foreign matter may

hamper subsequent metallurgical operations or with a view to economical transport’.”
[Emphasis Supplied]

16. The Appellant humbly submits that it is a trite law that circulars issued by CBIC are binding on the Department and the Department cannot be permitted to take a stand which is not in line with the Circular. In this regard, he relied on the decision of the Hon’ble Supreme Court in the case of **UOI v. Arviva Industries (I) Ltd., 2007 (209) E.L.T. 5 (SC)**. Therefore, the impugned order dated 30.11.2015 issued by the Ld. Commissioner (Rourkela), ignoring the above-mentioned clarification, is legally untenable and liable to be set aside.

17. Further, he relied on the Kirk-Othmer’s Encyclopedia of Chemical Technology, Fifth Edition, Vol.14, which states as follows:

*“High grade ore, containing over 60% total iron, can be used as direct shipping ore (DSO) and normally is sized at 6-40mm. High Grade ore fines, in a size ranging of less than 6mm, can be sold as sinter feed or further ground and agglomerated into pellets. Low grade iron ore must be ground to an acceptable size (to liberate gangue components) **followed by concentration.**”*

18. Furthermore, as per Kirk-Othmer’s Encyclopedia of Chemical Technology, Fifth Edition, Vol. 16, Page 127 & 128[Pg. no.38-40 of the Compilation], ‘Concentrates’ and ‘Ores’ are described as follows:

"Concentrate an action to intensify in strength or purity by the removal of valueless or unneeded constituents, i.e. separation of ore or metal from its containing rock or earth. The concentration of ores always proceeds by steps or stages. Liberation of mineral values is often the initial step. Concentrate also means a product of concentration, i.e. enriched ore after removal of waste in a beneficiation mill."

"Ore. A mineral or aggregate of minerals from which a valuable constituent, especially a metal, can be recovered at a profit."

19. In the present case, the fact of extracted iron ore being subjected to merely the processes of crushing and screening has not been disputed by the Department at any stage. The Appellant humbly submits that since no special processes of beneficiation, etc. are being performed in the instant case, hence, relying on the technical literature extracted above, it is evident that the demand confirmed vide the impugned order, holding the process of screening and crushing as amounting to manufacture of iron ore concentrate, is legally untenable.

20. At this juncture, it is humbly submitted that the present issue is no longer res integra inasmuch as favourable orders have been passed by the Hon'ble CESTAT, Kolkata for similarly placed assessee holding that crushing and screening of iron ores does not

result in conversion of iron ores into concentrates and therefore does not amount to manufacture.

21. He again relied on the judgment of **M/s. Khatau Narbheram & Co. vs Commissioner of Central Excise, Customs and Service Tax**[Final Order No. 77774 / 2025 dated 21.11.2025 passed in Excise Appeal No. 76180 of 2016],

22. Reliance is further placed on the judgment of **M/s. Odisha Mining Corporation Limited vs Commissioner of Central Excise, Customs and Service Tax**[Final Order No. 77196 / 2025 dated 05.08.2025 passed in Excise Appeal No. 75729 of 2016].

23. He also relied on the following cases:

(i) M/s Amba River Coke Ltd. vs Principal Commissioner of Customs (Preventive), Mumbai [Final Order No. A/85506/2022 dated 03.06.2022 in Customs Appeal No. 85365 of 2017]

(ii) Jains Mines And Minerals Versus Commr. Of C. Ex. & Service Tax, Jaipur [2018 (362) E.L.T. 711 (Tri. - Del.)] maintained in **Commissioner v. Jains Mines and Minerals - 2018 (362) E.L.T. A175 (S.C.)**

24. In view of the aforesaid submissions, the Appellant humbly submits that the demand in the present case is unsustainable.

25. Without prejudice to the above, the entire demand is liable to be set aside on the ground of Revenue Neutrality.

25. The Appellant humbly submits that the sized iron ore obtained after employing the processes of crushing and screening are either sent for manufacture of dutiable goods at the Appellant's steel plant located in Raigarh. Hence, even if it is assumed but not admitted that the demand confirmed vide the impugned order is sustainable, even then the demand is liable to be set aside on the ground of revenue neutrality.

26. The Appellant humbly submits that the amount demanded by the Department on sized iron ores sent to the Appellant's steel plant at Raigarh plant for manufacture of dutiable goods, if paid, shall be eligible as credit to the Raigarh Plant.

27. Hence, the duty demand confirmed against the Appellant vide the impugned order is clearly revenue neutral and therefore the demand does not survive for this reason also.

28. He also relied on the judgment passed by Hon'ble CESTAT, Kolkata in the Appellant's own case in **Excise Appeal No. 75563 of 2018, Final Order No. 75043 / 2026 dated 09.01.2026.**

29. It is humbly submitted that this Hon'ble Tribunal in the case of **M/s Steel Authority of India Limited v. Commissioner of Central Excise & Service Tax, Ranchi-I, [Final Order No. 75642/2025 dated 06.03.2025 passed in Excise Appeal No. 75067 of 2016]**, in case of inter-unit transfer of excisable goods between two units of the same

assessee, had held that no demand is sustainable since the issue is revenue neutral.

30. Further, in a catena of decisions, it has been held that the levy of additional duty on clearances to the other unit of the Assessee is a revenue neutral exercise and, in such case, the demand cannot sustain. In this regard, reliance is placed on the following decisions-

- a. M/s Shyam Sel & Power Ltd., (Divn.) v. Commissioner of CGST & Central Excise, Durgapur, [Final Order No. 76865 / 2025 dated 09.07.2025 passed in Excise Appeal No. 75635 of 2017]**
- b. M/s Hindalco Industries Ltd. v. Commissioner of Central Excise, Kolkata-II – [Final Order No. 75160/2025 dated 15.01.2025 passed in Excise Appeal No. 626 of 2010]**
- c. M/s H. V. Transmission Ltd. v. CCE, Jamshedpur –[Final Order No. 77559 – 77560 / 2023 dated 28.11.2023 passed in Excise Appeal Nos. 101 of 2011 and 78093 of 2018]**
- d. Shri Mahavir Ferro Alloys Pvt. Ltd. And Shri Vicky Jain Managing Director vs Commissioner of CGST & Central Excise, Rourkela – Odisha 2025 (2) TMI 477 - CESTAT KOLKATA**
- e. CCE & C. Vadodara-II Vs. Indeos Abs Ltd. 2010 (254) E.L.T. 628 (Guj.), affirmed by the Hon'ble Supreme**

Court in [2011 (267) E.L.T. A155 (S.C.)].

31. In light of the above submission, the Appellant prays that the demand confirmed under revenue neutral circumstances is liable to be set aside.

32. Without prejudice, the appellants are eligible to avail exemption under Notification No. 63/1995 dated 16.03.1995.

33. Without prejudice to the above, the Appellant submits that assuming but not admitting that the process of crushing and screening of iron ore amounts to manufacture of iron ore concentrate, even then no duty is payable in the instant case.

34. In this regard, reliance is placed on Notification No. 63/1995-CE dated 16.03.1995 which provides exemption from excise duty on all goods other than those falling under Heading 2701, 2702, 2703, 2704 and 2706, if manufactured in a mine. In the present case, if the Department's case that the processes of crushing and screening of iron ore amount to manufacture of iron ore concentrate is accepted, even then the Appellant shall be entitled to the benefit of exemption under Notification No. 63/1995 (*supra*) and the duty demand shall not sustain.

35. Hence, the demand confirmed in the present case is liable to be set aside on this ground as well.

36. Demand confirmed invoking extended period of limitation is unsustainable.

37. The Appellant humbly submits that the demand for the period February 2012 to

January 2014 has been proposed vide SCN dated 25.02.2015 by invoking extended period of limitation when SCN for identical issue for the period March 2011 to January 2012 was already raised within the limitation period.

38. In this regard, he also relied on the judgment of **Nizam Sugar Factory v. CCE, A.P. 2006 (197) E.L.T. 465 (S.C.)**, wherein it has been held that the extended period cannot be invoked for subsequent period involving identical issue.

39. In view of the above, it is humbly submitted that the demand confirmed for the period February 2012 to January 2014 invoking extended period of limitation is time barred and the impugned order is, therefore, liable to be set aside.

40. Further, the demand for the period February 2012 to January 2014 is also liable to be set aside as the issue is purely interpretational and it is a settled position of law that extended period of limitation is not invokable in such cases.

41. When demand itself is not sustainable, no interest is payable, and no penalty is imposable.

42. When demand itself is not sustainable, no interest is payable, and no penalty can be imposed on the Appellant. Further, the demand of equivalent penalty is unsustainable when the matter is purely interpretational.

43. In the instant case, technical literature on the subject as well as clarifications issued by Ministry of Mines/ CBIC speaks in favour of the Appellant, hence, the demand of equivalent

penalty under Section 11AC of the Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002 is unsustainable. Further, in absence of liability to pay duty under the Central Excise Act, 1944, the demand of penalty under Rule 27 of the Central Excise Rules, 2002 on the ground of not taking registration under the Central Excise Act is also unsustainable.

44. The Ld. Authorized Representative has justified the impugned order.

45. Heard both sides. Considered the submissions.

46. We find that short issue involved in this matter is that whether process of crushing and screening of iron ore will amount to manufacture or not in terms of Chapter Note 4 under Chapter 26 of Central Excise Tariff Act w.e.f. 01.03.2011 or not. The said issue has been examined by this Tribunal in the case of M/s. Khatau Narbheram & Co. (Supra) wherein this Tribunal observed as under:

"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

(1) milling (crushing and grinding);

(ii) washing;

(iii) filtration,

(iv) sorting;

(v) sizing;

(vi) gravity concentration and/or,

(vii) magnetic separation and/or;

(viii) flotation; and/or

*(ix) (pelletizing, sintering, agglomeration
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.

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.

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."

47. As issue is no more res-integra in the light of the decision in the case of M/s. Khatau Narbheram & Co. (Supra) we hold that the activity of crushing and screening of iron ore does not amount to manufacture of iron concentrates. Therefore, demand of Excise Duty is not sustainable against the appellant. In view of this, we do not find any merit in the impugned order. The same is set aside.

48. In result, appeal is allowed with consequential relief, if any.

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

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)