

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA**

REGIONAL BENCH – COURT NO.1

Excise Appeal No.76049 of 2016

(Arising out of Order-in-Original No.BSR/EXCUS-002-COM-019-15-16 dated 04.03.2016 passed by Commissioner of CGST & Central Excise, Bhubaneswar)

M/s Tarini Prasad Mohanty, Mine Owner

(Naibuga Iron & Manganese Mines, PO-Joda, Keonjhar)

Appellant

VERSUS

Commissioner of CGST & Central Excise, Bhubaneswar

(C.R.Building, Rajaswa Vihar, Bhubaneswar-751007)

Respondent

APPERANCE :

Shri Jnanesh Mohanty, Shri Narendra Kr.Das & Ms.Shreya Mundhra, all
Advocates for the Appellant

Shri S.K.Jha, Authorised Representative for the Respondent

CORAM:

HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)

HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.75772/2026

DATE OF HEARING : 23 JUNE 2026

DATE OF PRONOUNCEMENT : 30 JUNE 2026

Per Ashok Jindal :

The appellant is in appeal against the impugned order wherein demand of Excise duty of Rs.8,50,65,540/- was confirmed along with interest and an equal amount of penalty under Section 11AC of the Act read with Rule 25 of the Central Excise Rules, 2002, was also imposed on the appellant.

2. The facts of the case are that the Appellant being a proprietorship concern, is engaged in the mining of iron ore and manganese ore pursuant to a mining lease granted by the Government of Odisha under

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the Mines and Minerals (Development and Regulation) Act, 1957 read with the Mineral Concession Rules, 1960.

2.1 The iron ore raised from the appellant's mine is high-grade ore which requires no concentration. The ore is classifiable as iron ore lumps and fines under sub-headings 26011110/26011120/26011149 of the Central Excise Tariff and is unconditionally exempt as "ores" under Notification No. 4/2006-CE dated 01.03.2006 (Sl. No. 4) and, on supersession, under Notification No. 12/2012-CE dated 17.03.2012 (Sl. No. 56).

2.2 The actual field operations at the mine, namely (i) raising/excavation of the iron ore and (ii) crushing and screening thereof, were carried out not by the Appellant but by an independent contractor, M/s Sun Ispat Pvt. Ltd., under a Work Order dated 01.02.2010 (Exhibit A) at the rates of Rs. 150/MT (raising) and Rs. 225/MT (crushing & screening). The contractor rendered these activities as a taxable service and raised invoices charging Service Tax thereon, which was duly borne and discharged. The charges so paid are reflected in the Appellant's ledgers (Exhibit B) and the corresponding service-tax invoices are at Exhibit C.

2.3 The iron-ore raising process, in substance, comprises: drilling and blasting of the ore body to obtain Run-of-Mines (ROM); screening of the ROM to segregate lumps and fines; crushing of the lumps to sized ore (5-18 mm); and dispatch of the sized lumps and fines from the stockpile. The process effects only size reduction and segregation as per the buyers' requirements. No beneficiation, milling, hydraulic/magnetic separation, flotation, concentrate thickening or any other special

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treatment removing foreign matter (gangue) or enriching the ferrous content is carried out, and the Appellant has no concentration/beneficiation plant.

2.4 By the Finance Act, 2011, Chapter Note 4 was inserted in Chapter 26 of the Central Excise Tariff Act, 1985 (w.e.f. 01.03.2011), providing that "in relation to products of this Chapter, the process of converting ores into concentrates shall amount to manufacture." Purporting to act on the said Chapter Note, the Department took the view that the Appellant's crushing and screening of iron ore amounted to the manufacture of "iron ore concentrate" classifiable under sub-heading 26011150, which is excisable.

2.5 On that basis, five Show Cause Notices were issued to the Appellant covering the period March 2011 to March 2015, proposing recovery of central excise duty of Rs.8,50,65,540/- with interest and penalty, as tabulated below:

Sl.	Show Cause Notice No. & Date	Period Covered	Duty (Rs.)
1.	V(26)15/Adjn/B-II/41/2012/3260-62-A dated 28.02.2012	Mar 2011 – Jan 2012	95,77,988
2.	V(26)15/Adjn/B-II/163/2012/23258-2602-A dated 17.12.2012	Feb 2012 – Sep 2012	60,26,552
3.	V(26)15/Adjn/B-II/106/2013/20801-803-A dated 06.12.2013	Oct 2012 – Aug 2013	2,55,08,973
4.	V(26)15/Adjn/B-II/88/2014/17036-38-A dated 29.09.2014	Sep 2013 – May 2014	1,30,18,652
5.	V(26)15/Adjn/B-II/49/2015/10979-981-A dated 22.06.2015	Jun 2014 – Mar 2015	3,09,33,375
Total			8,50,65,540

2.6 The Appellant denied the allegations and contended that crushing and screening do not amount to manufacture, that no "special

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treatment" within the meaning of the HSN Explanatory Notes is carried out, and that the issue stood concluded by CBEC Circular/Instruction No.332/1/2012-TRU dated 17.02.2012 and a catena of decisions. The Appellant's product continues to be assessed and dealt with as "iron ore" by the mining and other statutory authorities and in commercial parlance.

2.7 By the impugned Order-in-Original No.BSR-EXCUS-002-COM-019-15-16 dated 04.03.2016, the learned Commissioner, without accepting the said submissions, confirmed the entire demand of Rs 8,50,65,540/- under the proviso to Section 11A(1)/11A(4) along with interest under Section 11AB/11AA, and imposed an equal penalty of Rs 8,50,65,540/- under Section 11AC read with Rule 25 of the Central Excise Rules, 2002, holding that any process rendering iron ore fit for use/transport amounts to manufacture under Chapter Note 4 and that the exemption for "ores" was unavailable.

2.8 Aggrieved with the said order, the appellant is before us.

3. The Id.Counsel for the appellant submits that the issue is no longer res integra, the identical issue having been decided in favour of similarly placed assessees by this Tribunal, including in respect of the very same Bhubaneswar-II Commissionerate, and the said decision having been affirmed by the Hon'ble Supreme Court.

3.1 At the outset, it is submitted that the activity carried out by the Appellant is confined to the raising of iron ore and its crushing and screening, i.e. mere size reduction and segregation of the ore, and does not amount to 'manufacture' of 'iron ore concentrate'. The iron ore

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raised by the Appellant is high-grade ore which requires no concentration. At no stage is the ore subjected to any process of beneficiation or special treatment which removes part or all of the foreign matter contained therein, or which enriches its ferrous content; only the size of the ore is reduced and the ore is segregated, as per the requirement of the industry.

3.2 He submits that the appellant carries out only raising and crushing & screening of the iron ore, and nothing more, is borne out by the contemporaneous documentary record. The said work was executed through *inter-alia*, a contractor, M/s Sun Ispat Pvt. Ltd., under the Work Order dated 01.02.2010 (Exhibit A), the scope whereof is limited to (a) raising/excavation of iron ore at Rs. 150/MT and (b) crushing and screening of iron ore at Rs. 225/MT, and which makes no provision whatsoever for any process of beneficiation or concentration. The charges paid to the contractor against this very work stand reflected in the Appellant's ledger accounts for the Financial Years 2011-12 to 2014-15 (Exhibit B), and the corresponding invoices raised by the contractor (Exhibit C) describe the work, in terms, as "*Providing Services in connection with raising of Iron Ore*" and "*Providing Services in connection with Crushing and Screening of Iron Ore*", and bill nothing else. The documentary record duly evidences that the only processes carried out on the iron ore were crushing and screening, and that no special treatment of any kind was undertaken by or on behalf of the appellant. The expression 'concentrate' is not defined in the Central Excise Tariff Act, 1985, and reference must accordingly be had to the HSN Explanatory Notes to Chapter 26, which provide as under:

"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, an ore becomes a 'concentrate' only when part or all of the foreign matter (gangue) is removed by special treatment. This position is binding on the Department by virtue of CBEC Circular/Instruction No. 332/1/2012-TRU dated 17.02.2012, issued, on a reference from the Bhubaneswar Zone itself and after consulting the Ministry of Mines, which clarifies that crushing and screening are mere preparatory processes, and that conversion of an ore into a concentrate requires further special treatments such as milling, hydraulic separation, magnetic separation, flotation and concentrate thickening, none of which is carried out by the Appellant, as established hereinabove. It therefore follows that the iron ore lumps and fines raised by the Appellant, having been subjected only to crushing and screening, do not answer the description of 'concentrate', and the deeming fiction in Chapter Note 4 to Chapter 26, which operates only upon "the process of converting ores into concentrates", is not attracted.

3.3 It is further submitted that the issue is no longer res integra, inasmuch as this Hon'ble Tribunal has, on identical facts, held that the activity of crushing and screening of iron ore does not amount to manufacture. In this regard, he relies on the decision of this Tribunal in

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the case of M/s Odisha Mining Corporation Ltd. v. Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-II [Final Order No. 77196/2025 dated 05.08.2025 in Excise Appeal No. 75729 of 2016], which has been affirmed by the Hon'ble Supreme Court in the Department's appeal there from having been dismissed vide order dated 12.03.2026 in Civil Appeal No.3416/2026 [*Commissioner v. M/s Odisha Mining Corporation Ltd.*, 2026 (3) TMI 862 (SC)], wherein the Hon'ble Court found no reason to entertain the appeal challenging the aforesaid Final Order dated 05.08.2025.

3.4 It is further submitted that the identical issue has consistently been decided in favour of the assessee in *M/s Khatau Narbheram & Co. v. Commissioner of C.Ex., Cus. & S.T., Bhubaneswar* [Final Order No. 77774/2025 dated 21.11.2025], wherein it was held that the processes of crushing and screening are primarily processes of size reduction and separation, that the burden of proving manufacture of concentrate is squarely on the Department, and that without the employment of special treatment and removal of foreign matter there cannot be any concentration; and in *M/s Jindal Steel and Power Ltd. v. Commissioner* [Final Order No. 75224/2026 dated 21.01.2026], wherein the Hon'ble Tribunal, following the above, reiterated that crushing and screening do not amount to conversion of ores into concentrates under Chapter Note 4. He also relies on the following decisions :

- i. *Commissioner of Cus. & C.Ex., Jamshedpur & Bhubaneswar-II v. Steel Authority of India Ltd.*, 2002 (12) TMI 142 / 2003 (154) E.L.T. 65 (Tri.-Kol);

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- ii. *M/s Amba River Coke Ltd. v. Principal Commissioner of Customs (Preventive), Mumbai, 2022 (6) TMI 217 / 2022 (381) E.L.T. 704 (Tri.-Mumbai); and*
- iii. *M/s Ninita Enterprises v. Commissioner of Central Excise, Bhubaneswar, 2026 (4) TMI 295 – CESTAT, Kolkata.*

3.5 He further submits that Chapter Note 4 to Chapter 26 is a limited deeming fiction which operates only upon the conversion of an ore into a concentrate, and not upon the processes of crushing and screening per se; and the burden of proving that a concentrate came into existence by special treatment, which lay squarely upon the Department, has not been discharged.

3.6 It is submitted that Chapter Note 4 to Chapter 26 deems only "the process of converting ores into concentrates" to amount to manufacture. The deeming fiction is therefore conditional upon a concentrate first coming into existence, and does not, and cannot, convert every preparatory process employed upon the ore into manufacture. Unless and until it is shown that the ore has been converted into a concentrate by the removal of part or all of the foreign matter through special treatment, the fiction is not attracted at all.

3.7 It is further submitted that where the Department alleges that the ore has been converted into a concentrate by processes going beyond crushing and screening, the burden of proving such processes, and the consequent removal of foreign matter, lies squarely upon the Department. This Hon'ble Tribunal has so held in *M/s Khatau Narbheram & Co.* (supra) and in *M/s Amba River Coke Ltd.* (supra). In

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the present case, the Department has led no evidence whatsoever to establish that the Appellant has employed any process of milling, hydraulic separation, magnetic separation, flotation or concentrate thickening; it is not even the case of the Department that the Appellant possesses any beneficiation or concentration plant; the statutory returns filed by the Appellant under the MMDR Act, 1957 reflect the production of Ore; and the Ministry of Mines, vide its Office Memorandum dated 25.01.2012, has itself clarified that the crushing and screening of Run-of-Mines into lumps and fines does not amount to the production of concentrate. The Department having failed to discharge the burden cast upon it, the very foundation of the demand falls away.

3.8 It is further submitted that the finding of the learned Commissioner that, during crushing and screening, the mud and loose earth attached to the ore incidentally get blown away and that this satisfies the requirement of "removal of foreign matter", is wholly untenable. The said finding is contrary to the HSN Explanatory Notes and the binding CBEC Circular dated 17.02.2012, and impermissibly reads the requirement of "special treatment" out of the definition of "concentrate". The incidental loss of loose earth during size reduction can neither be equated with, nor amount to, the removal of foreign matter by special treatment which alone brings a concentrate into existence. The finding of manufacture being founded upon presumption and surmise, the impugned Order is unsustainable.

3.9 It is submitted that the very activities of raising and of crushing & screening of iron ore which the Department now seeks to characterise

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as "manufacture" of concentrate were carried out by the contractor, M/s Sun Ispat Pvt. Ltd., as services rendered to the Appellant, and were subjected to and discharged of Service Tax. As is evident from the Work Order dated 01.02.2010 (Exhibit A), the ledger accounts (Exhibit B) and the invoices raised by the contractor (Exhibit C), the work is described, in terms, as "*Providing Services in connection with raising of Iron Ore*" and "*Providing Services in connection with Crushing and Screening of Iron Ore*", upon which Service Tax (together with Education Cess and Secondary & Higher Education Cess) has been duly charged and paid. It is submitted that this position is squarely supported by the decision of this Hon'ble Tribunal in *M/s Hind Metals & Industries (P) Ltd. v. Commr. of C.Ex., Cus. & S.T., Bhubaneswar-II* [2017 (9) TMI 1326 / 2018 (10) G.S.T.L. 547 (Tri.-Kol)], wherein the activities of mine development, sizing, crushing and screening carried out by a contractor for a mine owner were held to constitute "mining service" exigible to Service Tax, and the contention that such activities amounted to the manufacture/production of excisable iron ore was expressly rejected as an afterthought. Significantly, the said decision in *Hind Metals* was relied upon by this Hon'ble Tribunal both in *M/s Odisha Mining Corporation Ltd.* (supra) and in *M/s Khatau Narbheram & Co.* (supra) in holding that crushing and screening do not amount to manufacture.

3.10 It is further submitted that one and the same activity cannot, in law, be simultaneously a taxable "service" for the purpose of levy of Service Tax and "manufacture" of excisable goods for the purpose of levy of Central Excise duty. The Revenue, having treated the said activity as a service and collected Service Tax thereon, cannot be

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permitted to approbate and reprobate by now treating the self-same activity as the manufacture of concentrate so as to levy excise duty upon a contradictory premise. The demand is liable to be set aside on this ground as well. He submits that the product of the appellant continues to be "iron ore" (lumps and fines) classifiable under sub-headings 26011110/26011120/26011149 and exempt as "ores", no new and distinct commercial commodity having come into existence.

3.11 It is submitted that Note 2 to Chapter 26 defines "ores" to mean minerals of mineralogical species actually used in the metallurgical industry for the extraction of metals, and excludes only such minerals as have been submitted to processes not normal to the metallurgical industry. The iron ore lumps and fines raised by the Appellant squarely answer the said definition and are not subjected to any process not normal to the metallurgical industry.

3.12 It is further submitted that the settled test of "manufacture" is two-fold, namely, whether by the process a different commercial commodity comes into existence or the identity of the original commodity ceases to exist, and whether the commodity already in existence is of no commercial use but for the said process [*U.O.I. v. J.G. Glass Industries Ltd.*, 1998 (97) E.L.T. 5 (SC); *U.O.I. v. Delhi Cloth & General Mills Co. Ltd.*, 1977 (1) E.L.T. (J199) (SC)]. Neither limb of the test is satisfied in the present case. The iron ore remains iron ore in name, character and use; it is charged to royalty as iron ore under the MMDR Act, 1957, assessed in the mining returns as iron ore, and is received and used by the steel plants as iron ore and never as concentrate. A "concentrate", in contradistinction, is enriched ore

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segregated from waste in a concentration plant. The product of the Appellant therefore continues to be iron ore and remains unconditionally exempt as "ores" under Notification No. 4/2006-CE dated 01.03.2006 (Sl. No. 4) and, on supersession, under Notification No. 12/2012-CE dated 17.03.2012 (Sl. No. 56).

3.13 Further, he submits that the issue being one of pure interpretation arising from a deeming fiction newly introduced with effect from 01.03.2011, on which the Department itself sought a clarification from the CBEC, the extended period of limitation is not invokable, and no penalty under Section 11AC and no interest are sustainable.

3.14 It is submitted that the non-payment of duty, if any, was occasioned by a bona fide belief entertained by the Appellant. The very chargeability of crushing and screening of iron ore as "concentrate" was a matter of doubt even for the Department, which referred the issue to the CBEC, who in turn clarified it in favour of the assessee vide Circular dated 17.02.2012. The Appellant maintained all statutory records and filed all returns as prescribed, and there was no suppression of facts with intent to evade payment of duty. The extended period of limitation is therefore not invokable. It is further settled that successive Show Cause Notices raised upon an identical issue cannot be founded upon the extended period of limitation [*Nizam Sugar Factory v. CCE, A.P.*, 2006 (197) E.L.T. 465 (SC)].

3.15 It is further submitted that no penalty is exigible where the breach flows from a bona fide belief or where the issue is one of interpretation of law. In any event, the demand of duty itself being

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unsustainable, the consequential demand of interest and the imposition of penalty cannot survive.

4. The Id.A.R. for the Revenue has supported the impugned order.

5. Heard both the parties and considered the submissions.

6. We find that the issue involved in this case for consideration is whether the process of crushing and screening of iron ore undertaken by/on behalf of the Appellant amounts to "manufacture" of "iron ore concentrate" within the meaning of Chapter Note 4 to Chapter 26 of the Central Excise Tariff Act, 1985 (inserted w.e.f. 01.03.2011), so as to attract central excise duty, when the said process effects only size reduction and segregation of the iron ore and does not involve any beneficiation or special treatment removing foreign matter or enriching the ferrous content; and consequently, whether the iron ore lumps and fines so raised remain exempt as "ores" under Notification No.4/2006-CE / Notification No.12/2012-CE or not ?

7. The said issue has been settled by this Tribunal in the case of M /s Odisha Mining Corporation Ltd. Vs Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-II [Final Order No.77196/2025 dated 05.08.2025 in Excise Appeal No.75729 of 2016], which has been affirmed by the Hon'ble Supreme Court in Civil Appeal No.3416/2026 dated 12.03.2026 [Commissioner v. M/s Odisha Mining Corporation Ltd., 2026 (3) TMI 862 (SC)], wherein this Tribunal has observed 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.

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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

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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.”

8. Further, this Tribunal in the case of M/s Khatau Narbheram & Company Vs. Commissioner of Central Excise, Customs and Service Tax, Bhubaneswar reported in 2025 (11) TMI 1956-CESTAT-Kolkata, has observed as under :

"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

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"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 (i) 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) agglomeration (pelletizing, sintering, briquetting, or nodulizing).

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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

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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) subclause (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

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Mine owner. Subclause (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

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impugned order, along with interest and penalty thereon, are not sustainable and hence, the same are set aside."

9. Again, this Tribunal in the case of M/s Jindal Steel and Power Ltd. Vs. Commissioner of Customs, Central Excise & Service Tax, Odisha reported in 2026 (3) TMI 346-CESTAT-Kolkata, has taken the similar views and has observed as under :

"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.

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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:

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"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]

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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 abovementioned 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."

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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."

10. In view of the above, we find that crushing and screening do not amount to conversion of ores into concentrates. We find that the processes of crushing and screening are primarily processes of size reduction and separation, that the burden of proving manufacture of concentrate is squarely on the Department, and that without the employment of special treatment and removal of foreign matter there cannot be any concentration. Therefore, we find that the instant issue is no more res-integra and is squarely covered by the above cited decisions. Accordingly, we set aside the demand of service tax along with interest as confirmed in the impugned order. As the demand of service tax is not sustainable, no penalties are imposable on the appellant.

11. Therefore, we do not find any merit in the impugned order and the same is set aside.

12. In the result, the appeal filed by the appellant is allowed with consequential relief, if any.

(Pronounced in the open court on **30.06.2026**)

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)