

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, MUMBAI
WEST ZONAL BENCH
COURT No.**

Customs Appeal No. 86231 of 2013

(Arising out of Order-in-Appeal No. 747 (GR.I)2012 (JNCH)/IMP-619 dated 18.12.2012 passed by Commissioner of Customs (Appeals), Raigad)

Commissioner of Customs (Import), Appellant
Nhava Sheva

Jawaharlal Nehru Custom House,
Post Uran, Dt. Raigad,
Sheva 400 707.

Vs.

M/s. Star Industries Respondent

IGC, Phase-II, Samba,
Jammu 184 121.

Appearance:

Shri Manoj Kumar, Authorised Representative for the Appellant
None for the Respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. Sanjiv Srivastava, Member (Technical)

FINAL ORDER NO. **A/86334/2019**

Date of Hearing: 23.07.2019

Date of Decision: 23.07.2019

PER: S.K. MOHANTY

Heard the learned AR for Revenue. None appeared for the respondent, despite notice.

2. Whether the process of roasting of ores into concentrate should be considered as manufacture activity under Chapter Note 4 of Chapter 26 of the Central Excise Tariff Act, 1985 is the subject matter of present dispute. The issue arising out of the present case is no more *res integra* in view of the judgment of

the Hon'ble Supreme Court in the case of the respondent itself, reported in 2015 (324) ELT 656 (SC). The Hon'ble Apex Court have held that in view of Chapter Note 4 appended to Chapter 26 of the Tariff Act, the process of roasting of ores into concentrate shall be considered as manufacture and thus, the benefit of duty exemption provided under Notification No.4/2006-C.E. should not be available. The relevant paragraphs in the said judgment are extracted herein below:-

“26. Before we discuss these arguments and arrive at a particular conclusion, we would like to recapitulate the salient features of the case about which there is no dispute :

(a) The assessee is seeking benefit of Notification No. 4/2006-C.E. and relies upon Sl. No. 4 thereof which totally exempts goods described therein from payment of excise duty. The goods which are otherwise excisable are, thus, exempted from payment of duty. Description of these goods in Sl. No. 4 is 'Ores'.

(b) The goods imported by the assessee fall in Chapter 26 of Central Excise Tariff Act. Particular Tariff Item is 2613 against which the description of goods given under the said Tariff Item is 'Molybdenum Ores and Concentrate'.

(c) The goods imported by the assessee were not Molybdenum Ores in original form as mined. They had admittedly undergone the process of roasting and after the roasting, they are known as 'concentrates'. Even the assessee has described these goods as 'Roasted Molybdenum Ore Concentrate.'

(d) Chapter Note 4 treats the aforesaid process of roasting Ores into Concentrate as 'manufacture'.

27. *On the aforesaid facts, case of the assessee was that since ores include concentrates, assessee had claimed exemption*

from payment of CVD under Notification No. 4/2006-C.E. In support of this claim that even after roasting, concentrates remain ores only on the plea that ores is genus and concentrates is specie thereof, the assessee refer to literature on chemical technology and also its earlier judgment in M/s. Hindustan Gas and Industries Ltd. case which, in turn, relied upon the judgment of this Court in MMTC case. We have already analysed the decision in M/s. Hindustan Gas and Industries Ltd. case. The entire decision proceeds on the basis that roasting of an ore to obtain concentrate does not amount to manufacture specially when roasting is a process by which impurities in the ore are removed and the recoverable content of metal oxide is enhanced. In support, reference was made to Kirk-Othmer's Encyclopedia of Chemical Technology. Likewise, in MMTC case as well, which was relied upon by the Tribunal, this Court had held that Wolfram Concentrate which was having minimum 65% Tungsten Oxide was still an ore and classifiable under Item 26. Thus, the decision in Hindustan Gas primarily rested on the reasoning that roasting of an ore to obtain concentrate would not amount to manufacture and ore and concentrate are one and the same inasmuch as concentrate remains ore and only impurities are removed therefrom. On this premise, it was held that ore is genus and concentrate is a specie thereof.

28. *According to us, it is very clear from the reading of the judgment in Hindustan Gas case that basic and the common thread which runs throughout the decision is that subjecting ore to the process of roasting does not amount to manufacture. This very basis gets knocked off with the amendment carried out in the year 2011 with the insertion of Note 4. Note 4 now categorically mentions that the process of converting ores into concentrates would amount to 'manufacture'. Therefore, it cannot now be argued that roasting of ores and converting the same into concentrates would not be manufacture. For the same reason, the judgment in MMTC becomes inapplicable and reliance upon Kirk-Othmer's Encyclopedia becomes irrelevant. With the addition of Note 4, a legal friction is created treating the process of converting ores into concentrates as manufacture. Once this is treated as manufacture, all the consequences thereof, as intended for creating such a legal*

friction, would automatically follow. Following shall be the inevitable implications :

(a) It is to be treated that Molybdenum Ore is different from concentrate. That is inherent in treating the process as 'manufacture' inasmuch as manufacture results in a different commodity from the earlier one. Section 2(f) defines this term as under :

"manufacture" includes any process, -

(i) incidental or ancillary to the completion of a manufactured product;

(ii) which is specified in relation to any goods in the Section or Chapter notes of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) as amounting to manufacture; or

(iii) which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer."

(b) The purpose of treating concentrate as manufactured product out of ores is to make concentrates as liable for excise duty. Otherwise, there was no reason to deem the process of converting ores into concentrates as manufacture.

29. *Once the aforesaid legal repercussions are taken note of, as a fortiori, it becomes obvious that Notification No. 4/2006-C.E. which exempts only ores would not include within itself 'concentrates' also because of the reason that after the insertion of Note 4, concentrate is to be treated as a different product than ores, in law for the purposes of products of Chapter 26.*

30. *This brings us to the effect of Chapter Note 2 which is retained even after insertion of Chapter Note 4. No doubt, as per Chapter Note 2, 'ores' means minerals of mineralogical species actually used in the metallurgical industry for the extraction of mercury, of the metals of Heading 2844 or of the metals of Section XIV or XV, even if they are intended for non-metallurgical purposes. As per this note, metals of Section XV would be included in the term 'ores'. However, after the insertion of Chapter Note 4, these two Notes, namely, Note 2*

and Note 4 have to be read harmoniously. If we accept the submission of the learned counsel for the assessee predicated on Note 2, then Note 4 even after its conscious inclusion, would be rendered otiose which cannot be countenanced. Therefore, Note 2, when seen along with Note 4, has to govern itself in limited territory. On the basis of deeming fiction created by Note 4, once we arrive at the conclusion that process of roasting of Ore amounts to manufacture and it creates a different product known as Concentrate, for the purpose of exemption notification, which exempts only 'Ores' it is not possible to hold that Concentrate will still be covered by the exemption notification. Therefore, harmonious construction of Note 2 and Note 4 would lead us to hold that in those cases when Note 4 applies and Ores becomes a different product, it ceases to be Ores.

31. *We, thus, are of the opinion that in the impugned judgment, the Tribunal has rightly arrived at the conclusion that by virtue of Note 4, concentrate has to be necessarily treated as different from ores which is deemed as manufactured product after Molybdenum Ores underwent the process of roasting. Once we keep in mind that conversion of ores into concentrate is considered as manufacture and, therefore, becomes liable for central excise levy, exemption Notification No. 4/2006-C.E. is to be interpreted in this light as the Legislature has intended to treat ores and concentrates as two distinct items and Notification No. 4/2006-C.E. exempts only 'ores', concentrates automatically falls outside the purview of said notification. It is rightly argued by the learned senior counsel for the Revenue that exemption notifications are to be construed strictly and even if there is some doubt, benefit thereof shall not enure to the assessee but would be given to the Revenue. This principle of strict construction of exemption notification is now deeply ingrained in various judgments of this Court taking this view consistently."*

3. In view of the above settled position of law, we do not find any merits in the impugned order passed

by the learned Commissioner (Appeals). Accordingly,
the appeal filed by Revenue is allowed.

(Dictated and pronounced in the open court)

(S.K. Mohanty)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

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