

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
MUMBAI**

**WEST ZONAL BENCH**

**CUSTOMS APPEAL NO: 85364 OF 2017**

[Arising out of Order-in-Original No: CCP/ADJ/AKJ/06 & 07/2016 dated 30<sup>th</sup> November 2016 passed by the Principal Commissioner of Customs (Preventive), Mumbai.]

**JSW Steel Ltd**

2<sup>nd</sup> Floor, Innovation Centre, Geethapuram, Dolvi  
Tal: Pen, Dist: Raigad – 402 107

*... Appellant*

*versus*

**Principal Commissioner of Customs (Preventive)**

Marine & Preventive Wing  
2<sup>nd</sup> Floor, New Custom House, Ballard Estate  
Mumbai - 400001

*...Respondent*

**WITH**

**CUSTOMS APPEAL NO: 85366 & 85367 OF 2017**

[Arising out of Order-in-Original No: CCP/ADJ/AKJ/06 & 07/2016 dated 30<sup>th</sup> November 2016 passed by the Principal Commissioner of Customs (Preventive), Mumbai.]

**Shashikant Sharma**

2<sup>nd</sup> Floor, Innovation Centre, Geethapuram, Dolvi  
Tal: Pen, Dist: Raigad – 402 107

*... Appellant*

*versus*

**Principal Commissioner of Customs (Preventive)**

Marine & Preventive Wing  
2<sup>nd</sup> Floor New Custom House, Ballard Estate  
Mumbai - 400001

*...Respondent*

**APPEARANCE:**

Shri Vipin Jain and Shri Ramnath Prabhu, Advocates for the appellants

Shri S K Mathur, Special Counsel for the respondent

**CORAM:**

**HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)**  
**HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)**

**FINAL ORDER NO: A/ 86209-86211/2023**

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|-------------------|------------|
| DATE OF HEARING:  | 24/02/2023 |
| DATE OF DECISION: | 22/08/2023 |

**PER: C J MATHEW**

The issue in these appeals of M/s JSW Steel Ltd and Shri Shashikant Sharma, arising out of order<sup>1</sup> of Principal Commissioner of Customs (Preventive) for recovery of ₹ 14,51,40, 815, claimed as exemption in terms of notification no. 12/2012-CE dated 17<sup>th</sup> March 2012 (at sl no. 56) at the time of import of 2,07, 934.83 MTs of 'iron ore fines' against bills of entry no. 49/14-15/05.12.2014, no. 51/14-15/09.12.2014, 52/14-15/10.12.2014 and no. 66/14-15/05.01.2015, under section 28 of Customs Act, 1962, along with applicable interest under section 28AA of Customs Act, 1962 to the extent unpaid till May-June 2016, besides imposing fine of ₹ 15,00,00,000 under section 125 of Customs Act, 1962 along with penalty of ₹ 15,00,00,000 under section 114A of Customs Act, 1962 and imposition of personal penalty of ₹ 1,50,00,000 on the individual appellant herein, is the appropriateness of classification against tariff

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<sup>1</sup> [order-in-original no. CCP/ADJ/AKJ/06 & 07/2016 dated 30<sup>th</sup> November 2016]

item 2601 11 50 of schedule to Central Excise Tariff Act, 1985 for assessment to ‘additional duty of customs’ under section 3(1) of Customs Tariff Act, 1975 on the imports. According to Learned Counsel for appellant, the impugned order disposed off two notices issued to the appellant-company herein as well as M/s Amba River Coke Ltd, a sister-concern of the group, and the appeal of the latter, carried to the Tribunal, settled the dispute in favour of the declared classification in *Amba River Coke Limited v. Principal Commissioner of Customs (Preventive), Mumbai* vide order<sup>2</sup> dated 3<sup>rd</sup> June 2022

2. The appellant imported the impugned goods, viz., ‘iron ore Carajas Sohar (iron ore fines)’ valued at ₹ 110,15,74, 367 and an essential raw material in manufacture of ‘iron ore pellets’ by them, from M/s Vale International SA, Switzerland and declared it as fitting the description corresponding to tariff item 2601 11 31 of schedule to Central Excise Tariff Act, 1985 entitling the goods to exemption thereby from ‘additional duty of customs’ by notification no. 12/2012-CE dated 17<sup>th</sup> March 2012. The impugned entry in the notification affords unconditional exemption to

‘ores’

of all descriptions corresponding to heading 2601 to 2617 of schedule to Central Excise Tariff Act, 1985. In chapter 26 of schedule to

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<sup>2</sup> [final order no. A/85506/2022 in customs appeal no. 85365 of 20117]

Central Excise Tariff Act, 1985, intended for

*‘Ores, slag and ash’,*

goods other than ‘ores’ are placed in heading 2618, 2619, 2620 and 2621 of schedule to Central Excise Tariff Act, 1985. This dispute is thus restricted to heading 2601 and the resolution thereof to determination of any restrictive interpretation of

*‘ore’*

for exclusion from coverage of the impugned notification; for the denial of exemption is traced in the impugned order to shifting of appropriate classification to

*‘iron ore concentrate’*

corresponding to tariff item 2601 11 50 of schedule to Central Excise Tariff Act, 1985. Impliedly, a distinction has been drawn between ‘ore’ (as set out in the impugned notification) of ‘iron’ and ‘concentrate’ of ‘iron’ which, along with ‘ores’ of ‘iron’ constitutes the totality of description at the heading level and specifically including ‘roasted iron pyrites’ within it even as it is segregated at sub-heading level. In the enumeration, therefore, there is no controversy that, till the sub-heading level, the claims of both sides do not diverge. The issue is thus all about ‘ores’ intended as benefitting from ‘nil’ duty in the notification to the extent of not being ‘concentrates’ - an entirely different product emanating from

manufacturing operations on which duty of 'central excise' would, within the national jurisdiction, arise. In drawing the distinction, the adjudicating authority claims to have been guided by the 'Harmonized Commodity Description and Coding System', commonly referred to as 'Harmonized System of Nomenclature (HSN)', of the World Customs Organization (WCO).

3. The adjudicating authority has, in his wisdom, combined notices issued to the appellant herein and M/s Amba River Coke Ltd for disposal in the common impugned order owing to identical allegation arising from parallel set of facts pertaining to description, source and use of the impugned goods; the issue having been decided in favour of the importer upon challenge of the order, insofar as detrimental to them, from the latter, there would be no reason not to dispose of the dispute of the appellant herein in like manner. That would be in accordance with the principle of judicial consistency and judicial constancy that is the hallmark of judicial discipline. Nonetheless, Revenue is in appeal against the order of the Tribunal *supra* in *re Amba River Coke Ltd* and it is the plea of Learned Special Counsel for Revenue that the grounds preferred before the Hon'ble Supreme Court, to the extent of Tribunal having disregarded specific reasoning adopted by the adjudicating authority, should be considered by us. Such an exercise may have legal sanctity only if, and within the circumscribing set out by the Hon'ble Supreme Court in *Union of*

*India and anr v. Paras Laminates (P) Ltd [1991 AIR 696]*, resort is to be had to reference to the Hon'ble President for constitution of Larger Bench.

4. The plea of Learned Special Counsel for Revenue is extraordinary, and most especially, as one of us was a constituent of the bench that rendered the said decision in *re Amba River Coke Ltd* that is now contended as having disregarded certain findings in the very same order impugned therein as is now before us. It is travesty of judicial decorum, nay even illegal, for the Tribunal to review its own decision and, on identical set of facts, as undoubtedly the present dispute is, such plea by Learned Special Counsel is tantamount to seeking disregard of precedent, and not by distinguishment but for being *per incuriam*. Indeed, as the two disputes emanate from the same adjudication order and encompass identical facts, even deferment of decision merely on enumeration of grounds adduced in statutory appeal preferred under section 130E of Customs Act, 1962 is tantamount to acceptance of that plea. However, as the arguments had been preferred before us, we set them out for the record and without prejudice.

5. According to Learned Special Counsel, the finding by the adjudicating authority that a plain reading of the entry in the impugned notification coupled with clarification dated 23<sup>rd</sup> March

2012 of Central Board of Excise & Customs (CBEC – as it then was) suffices to exclude ‘concentrate’ from benefit of exemption intended only for ‘ores’ had not been appreciated by the Tribunal. It was further contended by him that the Tribunal had failed to appreciate the finding that the contextual relevance of insertion, by Finance Act, 2011, of note 4 in chapter 26 of schedule to Central Excise Tariff Act, 1985 requiring positive evidence of eligibility to claim the impugned goods as ‘ores’ and not ‘concentrates’ from the importers not having been discharged by them warranted denial of exemption. He argued that the Tribunal had also failed to appreciate the appropriateness of the weightage assigned to expert opinion of Professor Rathod and Shri DK Swamy by the adjudicating authority. It was also submitted that the Tribunal, in accepting the plea of the appellant in *re Amba River Coke Ltd*, had disregarded the reliance placed in the impugned order on the decision of the Hon’ble Supreme Court in *Star Industries v. Commissioner of Customs (Imports) Raigad* [2015-TIOL-235-SC-CUS] and on the decisions of Tribunal in *Rungta Mines v. Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-II* [2016-TIOL-6717-CESTAT-KOL] and in *Indian Rare Earths Ltd v. Commissioner of Central Excise & Service Tax, Bhubaneswar-I* [2016-TIOL-744-CESTAT-KOL].

6. It is common ground that the decision of the Tribunal in *re Amba River Coke Ltd* has, consequent upon challenge of the very

same order impugned in this appeal, reversed the classification of the impugned goods adopted by the adjudicating authority and allowed the benefit of exemption notification. In the context of submissions made before us by Learned Special Counsel we are, therefore, only required to consider if the Tribunal had, in that precedent decision, overlooked any fact or law that would have materially altered the outcome. Failure to appreciate a standpoint, as argued by Learned Special Counsel, does not, of itself, constitute distinguishment that may overcome *stare decisis* or justify disregard of cited precedent. That remit is now addressed by us.

7. To begin with, note 4 in chapter 26 of schedule to Central Excise Tariff Act, 1985 is specific to levy of duty of central excise and is intended solely upon manufacture, in a broader context, as ‘taxable event’ under the authority of section 3 of Central Excise Act, 1944 read with section 2(f)(ii) therein. According to Learned Special Counsel, the adjudicating authority had held that this deeming fiction, *ipso facto*, suffices to treat ‘ore’ and ‘concentrate’ as distinct products for the purposes of notification no. 12/2012-CE dated 17<sup>th</sup> March 2012. That argument is too superficial to find acceptance in the absence of examination of the sequence of legislation as well as the manner in which the impugned entry has been made in the impugned notification. The impugned note in chapter 26 creates a taxable event to which an appropriate tariff rate should apply subject to notification,

if any, under section 5A of Central Excise Act, 1944. That the notification was not intended to include ‘concentrates’ which are concatenated with ‘ores’ at the heading and sub-heading level has not been contextually ascertained with reasoned justification in the impugned order; instead there is an unconnected linkage that has been presumed by the adjudicating authority.

8. The decision of the Tribunal has, after examining the relevant chapter, including the notes, as well as the clarification of Central Board of Excise & Customs (CBEC) along with yet another clarification, concluded that such distinction is not evident in the notification. It was held that

*‘19. It would be seen that the main controversy that has arisen for determination in this appeal is as to whether the product that has been imported by the appellant is Iron Ore (fines) or Iron Ore (concentrate). ‘Concentrate’ has neither been defined in the Notes to Chapter 26 of the Tariff Act nor in the notification dated 17-3-2012. HSN also does not provide a separate classification for ore that is concentrated or otherwise. In fact, it is only in Chapter Note 4 to the Central Excise Tariff Act, 1985 that a distinction is sought to be drawn between ore and concentrate and it is as follows : “In relation to products of this chapter, the process of converting ore into concentrates shall amount to manufacture”. The Explanatory Notes to HSN clarify that for the purpose of Heading 2601 to 2617, the term ‘concentrate’ applies to ‘ores’ which have had part or all of the foreign matter removed by special treatment, either because such foreign matter may hamper subsequent metallurgical operations or for economical*

*transportation. It is, therefore, clear that 'concentrate' is a reference to 'ore' which has had all or part of the foreign matter removed by special treatment. In other words, if no special treatment has been undertaken on the 'ore' so as to remove part or whole of the foreign matter, it would not be considered as a 'concentrate'.*

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21. *The show cause notice, in Paragraph 18, has explained that foreign matter like alumina and silica contained in the ore, being the gangue, is required to be removed from the ore, and this process is called beneficiation. The relevant extract arising from Paragraph 18 of the notice reads as follows : "Beneficiation is a process, which removes the gangue particle, like alumina and silica etc. from the iron ore. Basically it separates  $\text{Fe}_2\text{O}_3$  or  $\text{Fe}_3\text{O}_4$  from other impurities in the iron ore. In this process, the iron content is improved to the maximum possible extent. The highest can be 70%, i.e. the possible purest form".*

22. *What needs to be noticed is that the Supreme Court in National Minerals Development Corporation held, after referring to the dictionary/technical material that 'concentrate' consists of enriched ore segregated from waste in a concentration plant.*

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24. *It is, thus, evident from the HSN Explanatory Notes as also from the judgment of the Supreme Court and the dictionary meanings relied upon therein, that iron ore concentrate refers to an ore that has been subjected to special processes for removal of all or part of the foreign matter i.e. gangue contained in the ore, with which it naturally occurs.*

25. *The HSN Explanatory Notes do not specify what would construe to be special treatments by which the foreign matter is*

removed from the ore. However, the CBIC, after consulting the Ministry of Mines, has clarified this aspect by a Circular dated 17-2-2012 and the relevant portion is reproduced below :

*“Circular : 332/1/2012-TRU, dated 17 Feb., 2012  
Government of India  
Ministry of Finance (Department of Revenue)  
Central Board of Excise & Customs, New Delhi*

*Subject : Dutiability of “iron ore” and “iron ore concentrates” - Clarification regarding.*

*A reference has been received from Bhuwaneswar Zone seeking clarification on the issue of whether “Iron ore lumps and fines” are dutiable as “concentrates” when subjected to crushing, screening, sizing or washing etc.*

*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’.*

*4. The above position may be brought to the notice of*

*Commissioners under your charge so that pending disputes, if any, may be decided accordingly.”*

26. *The aforesaid Circular clarifies that crushing and screening are mere preparatory processes and do not constitute the special treatment contemplated in the Explanatory Notes, by which part or all of the foreign matter is removed. In other words, it has been clarified that ores that have been merely subjected to the processes of crushing and screening, cannot be said to have been concentrated, as the said processes do not result in removal of part or whole of the foreign matter. It has been explained that crushing and screening followed with processes such as milling, hydraulic separation, magnetic separation, floatation and concentrate thickening have to be undertaken for ores to be converted into concentrate. In other words, the process of milling with hydraulic separation, magnetic separation, processes of concentrate thickening are, inter alia, the special processes and special treatments contemplated in the Explanatory Notes which result in removal of part or whole of the foreign matter.*

27. *In the instant case, both the show cause notice as also the impugned order, after extracting the pictorial representation from the global website of Vale International have categorically asserted that the mined ore at Carajas, Para, Brazil underwent two preparatory processes mainly crushing and screening at Carajas, Para, Brazil, before shipment of the same. It is evident from the aforesaid pictorial representation of the stage-wise extraction process of Iron Ores, that there are total of 11 stages involved from the extraction of the ore from the Carajas Mine to its shipment from Brazil. These sequential stages are titled in the pictorial representation as Infrastructure, Extraction, Transport, Crushing, Conveyor Belt, Screening, Stockyard, Recovery, Loading, Rotary car dumpers and Shipment. Out of these 11 stages, only 2 stages deal with physically preparing the ore for shipment, which are crushing and screening. In the process of*

*crushing, the ore which has been mined and is in the shape of a boulder/uneven blocks of upto 15 meters, is crushed using a primary crusher into smaller size. The webpage further reads that the ore may pass through the crusher upto three times. The crushed ore is thereafter carried in a conveyor over 85 km., where it is screened. The pictorial representation records that Vale has 17 production lines at its screening site, where the crushed ore is sorted basis the size of the crushed ore.*

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29. *What needs to be now examined is whether Iron Ore Carajas Sohar supplied from Oman, which is a blend of Iron Ore Carajas and Iron Ore concentrate, in which the proportion of Iron Ore Carajas is 90-95% and that of Iron Ore concentrate is 5-10%, is a concentrate or not. The process of blending/mixing undertaken at Oman is a physical process where iron ore fines from the Carajas mines are mixed with iron ore concentrates from the Southeastern System in the ratio of 90-95% of iron ore fines from Carajas and 5-10% of Iron Ore concentrate. In this process, there is no removal of part or whole of the foreign matter and, therefore, the same cannot be said to be a special treatment resulting in the ore becoming a concentrate. This apart, the blend of iron ore fines (90-95%) with iron ore concentrate (5-10%) would, by applying Note 3(b) to the General Rules of Interpretation to the Import Tariff, be classified as iron ore fines, as the essential character to the mixture is derived from the iron ore fines. The processes to which the imported iron ore fines have been subjected to, such as crushing, screening, and physical blending/mixing, are not processes by which gangue is separated from the mineral ore. It is only when the process of crushing and screening are followed with the process of milling and thereafter hydraulic separation, magnetic separation, floatation and*

*concentrate thickening that the ore can be said to have been concentrated.*

*30. The impugned order, however, holds that Vale International was using water for removal of impurities. This finding has been arrived at by an incorrect extrapolation of the pictorial representation in the impugned order. It needs to be noted that the show cause notice had not made any reference to the aforesaid pictorial extract from the website. It is on the bases of the incorrect pictorial representation that the impugned order holds that at Cajaras, Vale was using several equipment such as filters, pumps, thickeners, magnetic separators, floatation column for removal of impurities. It is evident from the website of Vale that conventionally, where the ore is of a low grade, the use of water and equipment such as filters, pumps, thickeners, magnetic separators, floatation column, in addition to crushers and screens is envisaged. On the other hand, the website records that the Iron ore extracted at Carajas is rich iron ore and dry processing is undertaken. The Vale website does not admit use of any water for processing or that there was any removal of part or whole of the gangue from the iron ore. The website of Vale, as has been relied upon by the Department, itself shows that from 2008 onwards it only undertakes dry processing.'*

and we notice a specific finding thereupon, on the second issue flagged by Learned Special Counsel, thus

*'28. It is an undisputed position, as is also claimed by CBIC, that mere crushing and screening of ore, does not result in removal of part or whole of a foreign matter and that Iron Ore, which has been subjected to crushing and screening cannot be said to have been concentrated, by the removal of gangue i.e., the foreign matter from the ore. It needs to be noticed that both, the show cause notice and the impugned order, have in passing,*

*contended that processes, beyond crushing and screening, have been undertaken on the Iron Ore at Carajas, Para, Brazil. However, no evidence has been led to even suggest, let alone prove, that other processing had taken place at Carajas, Para, Brazil. The burden to prove that processes beyond crushing and screening had been carried out was on the Revenue, but it failed to establish. It is, therefore, not possible to accept the said contention of the Revenue.'*

9. That the submission of Learned Special Counsel of the expert opinions of Professor Rathod and Shri DK Swamy not having been considered by the Tribunal is not an accurate reflection of the proceedings is apparent from

*'33. This contention of Learned Special Counsel for the Department cannot also be accepted for the reason that the CBIC has itself in the Circular dated 17-2-2012 clarified that crushing and screening are mere preparatory processes and do not tantamount to concentrating an ore, as there is no special treatment involved in the same and that it is only through the additional process of milling, hydraulic separation, magnetic separation, floatation and concentrate thickening that a part or whole of the foreign matter is removed, so as to concentrate an ore. Even the process of blending does not result in removal in any of part or whole of the foreign matter, so as to tantamount to concentrating the ore. The report dated 6-5-2016 of Dr. Rathod cannot be relied upon. Iron ore, being a naturally occurring product, the composition thereof as also the composition of the gangue associated with the same varies from mine to mine, location to location, region to region. There can be no basis to impute any certainty that alumina to silica ratio would always be greater than 1 in case of natural ores. The appellant had, in the*

*reply, demonstrated that naturally occurring high grade iron ores, even in India at the Bacheli and Bailadila of NMDC have the alumina to silica ratio less than 1. The impugned order as also the evidence relied in support of the same have not disputed this position. The report of Dr. Rathod could not, therefore, have been relied upon to hold that what had been imported by the appellant was Iron ore that had been concentrated. The contents of the letter dated 28-4-2016 of Shri D.K. Swamy, Administrative Officer in the Indian Bureau of Mines are contrary to the opinion of the Ministry of Mines, as communicated of the Circular dated 17-2-2012.'*

in the order.

10. Insofar as the three judicial decisions are concerned, we find that the Tribunal had settled the classification on the facts and physical properties peculiar to 'iron ore fines' imported by the appellant therein and which is identical to the goods impugned in this appeal. Any bolstering that the adjudicating authority considered necessary to support his finding on facts were not only not directly in relation to the controversy over the rival classifications but also not pertaining to imported goods as presented for assessment. Moreover, it is seen from the order of the Tribunal that relevance of these cases laws had not been pressed in arguments countering the challenge mounted in *re Amba River Coke Ltd*; had those been urged but not considered, appropriate recourse should have been had to section 129B(2) of Customs Act, 1962. In the absence of such, the plea of non-consideration of judicial decisions as justification at this stage for

discard of the decision of the Tribunal in *re Amba River Coke Ltd* is not tenable.

11. In the limited remit before us, Revenue has not been able to substantiate its plea for urging a contrary stand on classification of the impugned goods or to entertain any impediment in following judicial precedent that has determined classification of goods impugned in the appeal. With the classification, as originally declared, being affirmed, the proceedings against the individual also does not sustain. For the above reasons, and respectfully following the decision of the Tribunal in *re Amba River Coke Ltd*, we set aside the impugned order and allow the appeals.

*(Order pronounced in the open court on 22/08/2023)*

**(AJAY SHARMA)**  
***Member (Judicial)***

**(C J MATHEW)**  
***Member (Technical)***