Blending & crushing 'iron ore' does not result into 'concentrates', allows importer benefit of exemption

Date : June 17 2022

Amba River Coke Ltd [TS-264-CESTAT-2022-CUST]

Conclusion:

CESTAT Mumbai holds that process of crushing and screening 'Iron Ore' after mining and its subsequent blending with 5-10% iron ore concentrate would result in the classification of goods imported under CTI 2601 11 31 as 'Iron Ore' fines and not Iron Ore concentrates under CTI 2601 11 50, hence, entitled for exemption benefit from CVD payment under Sr. No. 56 of Notification No. 12/2010-CE dated March 17, 2012; Notes that Assessee imported 18 consignments of iron ore purchased from Vale International, Switzerland which had undergone blending at Vale's plant in Oman after they were mined from Carajas, Brazil and the same were provisionally cleared by the Customs; However, subsequently, on enquiry, opinion was formed that 'iron ores' have undergone special process which has concentrated the ores by relying on information on Vale International website and hence, allegation of wrong classification was made in the SCN which was confirmed by the impugned order; Observing the lack of definition for 'concentrates' except in Chapter Note 4 to the Central Excise Tariff Act, 1985, the position clarified in Circular No. 9/2012-Cus dated March 23, 2012, and SC ruling in National Minerals Development Corporation, CESTAT derives 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" and "ores that have been merely subjected to the processes of crushing and screening, cannot be said to have been concentrated"; Further, derives that these special process are milling with hydraulic separation, magnetic separation, processes of concentrate thickening are, inter alia, as contemplated by the Circular; Asserts 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" but "no evidence has been led to even suggest, let alone prove, that other processing had taken place.." and holds, "The burden to prove that processes beyond crushing and screening had been carried out was on the Revenue, but it failed to establish.."; Hence, noting that burden of proof has not been discharged by the Revenue and that CBIC has itself in the Circular dated February 17, 2012 clarified that crushing and screening are mere preparatory processes and do not tantamount to concentrating an ore, confirms assessee's classification as correct while setting aside the impugned order

Decision Summary:

The order was passed by Justice Dilip Gupta (President) and Shri C.J. Mathew (Member-Technical)

Advocates Vipin Jain, Vishal Agarwal and Abhishek Kapadia appeared for Assessee, whereas Revenue was represented by Special Counsel S.K. Mathur.

Issue

The issue involved in the instant matter was two-fold:-

(i) Whether the process of crushing and screening undertaken on the Iron Ore after it was mined and its subsequent blending with 5-10% iron ore concentrate, would result in the goods imported being classifiable under CTI 2601 11 50 as Iron Ore concentrate, as against CTI 2601 11 31 for Iron Ore fines and consequently be entitled for benefit of the exemption from payment of CVD at import according to Sr. No.56 of notification?

(ii) Whether the burden to establish entitlement to exemption is on the assessee or said burden had shifted on the Department, since the benefit of the exemption had been extended not only at the time of clearance of the imported goods but also at the time of finalization of the provisional assessment?

Facts

Assessee claimed exemption from payment of CVD on import of 18 consignments of iron ores from Vale International SA, Switzerland by classifying the same under CTI 2601 11 31. The exemption was claimed as per Notification which exempts the excisable goods 'Ores' classified under Ch 2601 to 2617 from excise duty. The bills of Entries (BoE) were provisionally assessed during which query was raised whether goods imported were 'iron pellets' and whether the ore underwent blending operation by the supplier at Oman. Assessee replied that ore at Carajas, Para, Brazil only underwent the process of crushing and screening, which as clarified by the CBIC, did not result in the concentration of the ore, and neither did the blending of 90-95% of iron ore with 5-10% of iron ore concentrate resulted in the removal of the foreign matter so as to qualify as a concentrate.

Thereafter, the provisional assessments were finalized holding that the goods were correctly classified by the assessee and were consequently allowed to take the exemption benefit. Thereafter, an enquiry was conducted on which the investigating authority formed an opinion that ores and concentrates are two distinct excisable goods and process of converting ores into concentrates amounts to manufacture. For this, reliance was put into a process known as 'Beneficiation' which means removal of foreign matter like alumina and silica (gangue) contained in the ore. Hence, the assessee was found not entitled for exemption and accordingly, SCN was issued and the same was confirmed by classifying the goods under CTI 2601 11 50. Hence, the appeal.

CESTAT Findings

On the first issue, CESTAT observed the lack of definition of 'Concentrate' in Notes to Chapter 26, in the notification, and the HSN.

CESTAT added that "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" from which "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'."

CESTAT derived that the same position also emerges from CBIC Circular dated March 23, 2012 which clarifies that "benefit of exemption notification under Sr. No. 4 of the Notification 4/2006-CE., dated 1-3-2006 will be available only to imported Ores and not to imported Concentrates."

CESTAT noted that the Supreme Court in National Minerals Development Corporation has held that 'concentrate' consists of enriched ore segregated from waste in a concentration plant.'

Hence, CESTAT opined, "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."

Since the HSN Explanatory Notes do not specify what would construe to be special treatments, CESTAT referred to CBIC Circular No. 332/1/2012-TRU dated February 17, 2012 which "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."

Further, CESTAT noted that the Circular clarified that the "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."

CESTAT observed that in the instant case, "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."

CESTAT noted that "The process of blending/mixing...is a physical process where iron ore fines... are mixed with iron ore concentrates.. in the ratio of 90- 95% of iron ore fines...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."

Therefore, since the "CBIC has itself in the Circular dated 17.02.2012 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.", CESTAT held that "the process of crushing and screening undertaken on the Iron Ore after they have been mined at Carajas, Brazil and subsequent blending at Oman with 5-10% iron ore concentrate would result in classification of the goods imported under CTI 2601 11 31 as Iron Ore fines and would consequently be entitled to the benefit of exemption from payment of CVD under the notification dated 17.03.2012."

Conclusion

Accordingly, the impugned order was found to be unsustainable and set aside and the assessee's appeal was

allowed.

Case Name:
Amba River Coke Ltd. vs Principal Commissioner of Customs (Preventive)