

Vikram Ispat Vs. Commissioner of Customs

Vikram Ispat Vs. Commissioner of Customs

SooperKanoon Citation : sooperkanoon.com/33964

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-30-2004

Judge : S T S.S., T Anjaneyulu

Appellant : Vikram Ispat

Respondent : Commissioner of Customs

Judgement :

1. Appellants are an assessee under the Central Excise Act 1944 and discharge duty on Iron & Steel made from DR Grade Iron Ore Pellets imported from time to time. Custom Authorities recovered Cess on such imports @ Rs. 1 per M. Ton under the Iron Ore Mines and Manganese Mines Labour Welfare Cess Act 1976 (herein after referred to as (Cess Act)).

On 12.12.94, the appellant submitted a letter intimating that Welfare Cess Act is not applicable on Iron Ore Pellets imported by them & claimed refund of Cess paid, on BE'S dated 5.10.94 to 3.04.95 amounts to Rs. 4,67,590.

2. Department issued a Show Cause Notice dated 28.6.95, proposing to reject the term refund claims so filed on the grounds- Whereas cess is leviable on imported goods under provisions of Section 3 (1) (b) of the Iron ore mines and manganese Ore Mines labour welfare cess Act, 1976 (Act No. 55 of 1976) being levied as Excise duty on imported iron ore pellets read with Section 3 (1) of Customs Tariff Act, 1975 countervailing duty levied in term of Section 3 (1) of Customs Tariff Act, 1975 has to be equal to the excise duty for the time being leviable or a like article if

produced or manufactured in India. The duty of excise @ of Rs. 1/- per metric tone which is leviable as cess under the iron ore mines and manganese Ore Mines labour Welfare Cess Act, 1976 (Act No. 55 of 1976) also becomes leviable as additional duty on imported goods.

& after hearing the importer, the claims were rejected after coming to the findings- It is seen that iron ore pellets imported by the party into India are classified under chapter heading 26.01 of Custom Tariff Act, 1975 wherein the descriptor of articles reads on "Iron ores and concentrates, including roasted iron pyrites" which itself implies that iron ore in the form in which it is produced from any mine only, is not covered by this descriptor but other form of iron ore such as roasted iron pyrites which have under one slake process after having been produced from any mine are also covered by this description. Similar is the case of iron ore pellets which are obtained by the process of pelletisation of iron ore and are nothing but pellets of iron ore which but ores, but only it is different form or size to facilitate metallurgical extraction, and hence these are treated at par with iron ore and included in the same chapter heading 26.01. further Chapter Note 2 of Chapter 26 says that "heading Nos. 26.01 to 26.17 not, however, include minerals which have been submitted to process not normal to the metallurgical Industry" Iron ore pellets are obtained by the process of pelletisation which is very much normal to the metallurgical industry and hence iron ore pellets are obtained by the process of pelletisation which is very normal to the metallurgical industry and hence iron ore pellets are squarely covered by the definition of 'Ores' by virtue of Chapter Note 2 to the Chapter 26 of the Customs Tariff. It is seen from the records of the case that the party has also sought clearance of iron ore pellets as iron ores under . Hdg.

26.01 and has not disputed about the same anywhere in their argument which would be pertinent to note in this context.

I have also observed that the classification of indigenous iron ore pellets is done under Ch.Hdg. 26.01 of C.Ex.Tariff Act, 1985 as 'Iron Ores and concentrates including roasted iron pyrites.' Chapter Note 2 to the Chapter 26 of CETA, 1985 squarely covers the iron ore pellets as 'Iron Ores' which has not been disputed by the party during the course of argument. Appendix II of the C.Excise manual

'Excise Duties and Cesses leviable under miscellaneous Acts' specifies that cess @ Rs. 1/- P.R.T shall be levied on iron ore falling under Chapter 26 of the Central Excise Tariff Act, 1986 in accordance with the provisions of 'The Iron Ore Mines & Manganese Ore Mines and Chrome ore mines labour welfare Cess Act, 1976 (55 of 1976) It is observed that under the said cess act, a duty of excise is levied and collected as a cess on all iron ore produced in any mine. Section 3(1) of the Customs Tariff Act, 1975 provides that the countervailing duty levied on imported goods has to be equal to the excise duty for the time being leviable on like article if produced or manufactured in India. Such duty is leviable notwithstanding whether such goods are produced or manufactured in India or not This is clear from the decision of CEGAT, special bench, New Delhi in the case of the Collector of Customs v. Birla Jute Industries Ltd 1992 (61) E.L.T. 100 (Tribunal) . Incidentally as was stated in Kalyanni Stores v. state of Orissa, AIR 1966 SC 1686 and reiterated in Mohar Mekan Breweries Ltd. v. Excise and taxation commissioner (1976) 3SCC421: 1976 Supp. SCR 510 that a countervailing duty is 'meant to counter balance; to avail against with equal force of virtue; to compensate for something or serve as equivalent or substitute for'.

It is also observed that a 100 % Export oriented unit like M/s Kudremukh iron ore company Ltd Mangalore who supply iron ore pellets to the party ie. M/s Vikram Ispat pay cess @ Re. 1/- P.M.T. while clearing their goods for home consumption. The said company being 100% E.O.U. the effective rates of duty on clearances of their goods for home consumption are governed by C.ExNotification No. 101/93-CE dated 27-12-93. It is seen from the text of the said Notf.that is exempts all excisable goods specified in the schedule to the CETA, 1985 and produced or manufactured in a 100% EOU or a free trade zone and allowed to be sold in India from so much of duty of excise leviable there under Under Section 3 of Central Excise and salt Act, 1944 as is the excess of the amount calculated at the rate of 50% of each of the duties of Customs, which would be leviable Under Section 14 of Customs Act, 1962(52 of 1962) read with any other Notifi. for the time being in force issued under Sub-section of Section 25 of the said Customs Act on the like goods produced or manufactured outside India if imported into India. M/s Kudremukh iron ore Co. Ltd Mangalore being 100% E.O.U have to pay 10% C.Ex.duty and cess Re.

1/P.M.T. on iron ore pellets cleared for home consumption by virtue of Notfh. 101/93-CB dated 27-12-93 only because the like goods if imported/into India are chargeable to same rate of CVD and cess under Customs Act, 1962.

The Customs Tariff does mention Iron ore pellets specifically under Exemption Notfh. No. 21/95-CUS dated 16.3.95 but it does not say anywhere that Iron ore Pellets are Iron ore. All that can be deduced from these facts is that 'Iron Ore pellets' is a variety of 'Iron Ores' on which certain exemption is available. Just because of the plural the phrase 'Iron Ores' is used in the Customs Tariff, it would not be correct to say that it is different from 'Iron Ore' which is a singular phrase used in Cess Act, and does not include 'Iron Ore Pellets' which are classified as 'Iron Ores' in Customs Tariff. Iron ore is a product which is always produced from a mine.

Iron ore pellets owe their present state of existence to production from a mine and subsequent pelletization. The process of pelletization does not make them goods different from Iron ore as they are classifiable under the same Ch. Heading 26.01 and the process of importance here is the production from a mine. Hence Iron Ore pellets are amply covered by the phrase 'Iron Ore produced in any mine' used in the Cess Act. Hence cess is leviable on Iron Ore pellets imported into India.

I have carefully gone through the records of the case and heard the appellant. However, I am unable to accept that iron ore pellets are different from iron ore compact and gives it a shape. Agglomeration of iron ore does not change physical or chemical properties of the iron ore. It only enhances ease of handling the ore. In my view no new product is brought in to existence and pelletisation does not amount to manufacturing. As a result iron ore pellets essentially remain to be iron ore for the purpose of classification or for levy of cess.

a) The IRON ORE MINES [MANGANESE ORE MINES AND GAROME MINES] LABOUR WELFARE FUND ACT, 1976 (Act No 61 of 1976 & the iron ore mines and manganese ore mine Labour Welfare Cess Act 1976 (No 55 of 1976) vide Section 3 thereof levies the Cess. This Section reads as With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be levied and collected as a cess for the purposes of the Iron

Oren Mines and Manganese Ore Mines Labour Welfare Fund Act, 1976- (b) a duty of excise, where such iron ore is sold or otherwise disposed of to the occupier of any metallurgical factory, or to any person who intern sells it to a metallurgical factory, or is used by the owner of the mine in any metallurgical factory, at such rate not exceeding one rupee per metric tonne of iron ore as the Central Government may, from time to time, fix by notification in the Official Gazette; Explanation-Where the owner of any iron ore mine or manganese ore mine is also the occupier of a metallurgical factory, then, for the purpose of Sub-clause (b) of Clause (i) or Sub-clause (b) of Clause (ii) all the iron ore or manganese ore, as the case may be produced in the mine and not sold or otherwise paid of to the occupier of any other metallurgical factory or to any other person shall be declared unless the contrary is proved to have been used by such owner for his own metallurgical factory This act 55 of 1976 also does not define "Iron Ore" or a metallurgical factory," however vide Section 6, thereof it empowers the Central Government to exempt 'a metallurgical factory' or a class of 'metallurgical factories' for the reasons therein b) Ores as mined & brought out of mother earth are normally of accepted merchantable quality, only after they are usable as ores, by undergoing certain process to render them acceptable for metal extraction process. Such process are as crushing, sorting sieving washing magnetic separation and other process which are recognised in international/National trade and ore as are mentioned in notes to Chapter 26 Central Tariff & Central Excise Tariff Act 1985. Such processes, including pelletisation, undergone, to render ores acceptable, not result into a product other then a ore. The Apex court in the case of Indian Hard Metal (P) Ltd 1978 ELT J667 had held that such processed ores (Wolfram in that case) would have the classification under Chapter 26 of the Customs Tariff as it stood then. Following the same, in this case, pellatisation of Iron Ore would, not change the classification it would remain classified under Tariff item 2601 as ore, on reading note 2 thereunder.

c) No material is produced before us to indicate that pelletisation of mineral iron ore would rule it out from 26.01, or it being not a product of a metallurgical factory' or manufactured there. The process of pellisation would independently attract Excise levy.

d) Since Cess is to be recovered as Central Excise Duty vide Section 3 of the Act 55 of 1976, the same can be levied & recovered under the provisions of Section 3 of the Custom Tariff Act 1975.

e) When levy is being upheld, the recovery effected cannot be refunded. The orders of the lower authority are therefore to be upheld.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com