

# Minerals & Metals Trading Corporation ... vs Union Of India & Others on 24 August, 1972

**Equivalent citations: 1972 AIR 2551, 1973 SCR (1) 997, AIR 1972 SUPREME COURT 2551, 1973 TAX. L. R. 20**

**Author: A.N. Grover**

**Bench: A.N. Grover, K.S. Hegde, D.G. Palekar**

PETITIONER:

MINERALS & METALS TRADING CORPORATION OF INDIA LTD.

Vs.

RESPONDENT:

UNION OF INDIA & OTHERS

DATE OF JUDGMENT 24/08/1972

BENCH:

GROVER, A.N.

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HEGDE, K.S.

PALEKAR, D.G.

CITATION:

1972 AIR 2551                      1973 SCR (1) 997

CITATOR INFO :

R                      1977 SC 597 (34)

R                      1979 SC 397 (3,4,6,9)

D                      1985 SC 1201 (12)

ACT:

Indian Tariff Act--Import Tariff--Annexure L--Entries 26, 70(7) & 87-Wolfram Concentrate with 65% WO<sub>3</sub> concentration-Whether importable, duty free as Metallic ore-Normally acceptable merchantable quality of 'ore' alone relevant. Interpretation of statutes--Taxing statutes-Meaning in commercial sense and not in scientific sense should be followed.

HEADNOTE:

The appellant imported 200 metric tons of wolfram concentrate, under a contract which prescribed minimum

contents of 65% of W03 in the concentrate. The Customs authorities levied duty at the rate of 60% amount under item 87 of the First Schedule. The appellant claimed refund on the ground that no duty was leviable as the goods imported was an "ore" and fell under item 26 or 70(7) of the Import tariff. The Assistant Collector of Customs held that the appellant was not entitled to refund because the term 'ore' mentioned in the text of item 26 is confined to articles which are in 'form and condition in which they are mined and not as wolfram ore concentrate in powder form as in the present case. On appeal by the appellant the Appellate Collector held that the goods in question were in the manufactured form made by special specifications by dressing and were thus not "ores". The Central Government rejected the revision application filed by the appellant holding that the examination by the Chemists showed that the uniform granules of the material were not only separated from rock but also from various impurities and had been subjected to such processing as would take them out of the category of metallic ore mentioned in entry 26.

In appeal to this Court the appellant contended that for the purposes of levy of duty under entry 26 the normally acceptable merchantable quality of wolfram (containing a minimum 65% W03) is relevant and not wolfram in mined form. Allowing the appeals,

HELD : Wolfram ore when mined contains only 5 to 2 per cent W03 and in order to make it usable and merchantable ore with minimum 65% W03, Concentration is necessary. If item 26 of the Import Tariff is to be restricted to wolfram being material containing 5 to 2 per cent W03, it would be mainly rock which can not be imported in large quantity and it will have no market. It is only usable ore with 65% W03 concentration that is relevant for levy of duty. What has to be seen is what is meant in International trade and in the market by Wolfram ore containing 65% or more W03. The said concentrate is achieved by selective mining and washing or magnetic separation. It does not involve any manufacturing or processing with chemical for removing impurities. The concentrate, therefore, does not cease to be an 'ore'. within the meaning of item 26. [1002C-F]

HELD, further, that in interpreting items in taxing statutes, resort should be had not to the scientific or technical meaning but to the meaning attached to them by those dealing in them in their commercial sense. [1002H]

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#### JUDGMENT:

CIVIL APPELLATE JURISDICTION : C.A. Nos. 877-879 of 1967. Appeal by special leave under Article 136(1) of the Constitution of India from the order No. 2846-2848 of 1966, dated 25th and

29th November, 1966 of the Govt. of India, Ministry of Finance in Custom Revision Application. M. C. Setalvad, B. Sen, M. K. Banerji, P. C. Bhartari, Ravinder Narain, D. N. Misra, J. B. Dadachandji, for the appellant.

L. N. Sinha, Solicitor-General of India, S. N. Prasad, B. D. Sharma and S. P. Nayar, for the respondents. S. V. Gupte, D. B. Engineer P. C. Bhartari and Ravinder Narain, for the interveners.

The Judgment of the Court was delivered by Grover, J. These appeals by special leave are from an order of the Government of India passed in November 1966 refusing to refund the duty charged on 200 metric tons of Wolfram Ore imported by the appellant Corporation from the U.S.S.R. The facts are not in dispute. In October 1953 the appellant entered into a contract with a Moscow concern for the purchase of 200 metric tons of Wolfram Concentrate. The chemical composition of the goods apart from other components was to contain  $WO_3$  the minimum percentage being 65%. The Office of the Chief Controller of Imports and Exports, Government of India, granted an import license on November 21, 1963 permitting import of the aforesaid Wolfram Ore. The goods arrived in Bombay on January 14, 1964. It appears that certain tests were carried out by the Deputy Chief Chemist of Customs. The customs authorities levied duty under item 87 of the First Schedule-Import Tariff, at the rate of 60% amounting to Rs. 4.13. 796.24. The appellant paid that amount under protest. The appellant claimed refund on the ground that no duty was leviable as the goods imported fell either under item 28 or 70(7) of the said Schedule. On September 14, 1964 the Assistant Collector of Customs (Refund Section) held that the "goods imported were in powder form and were found to be mainly composed of Tung- ston Oxide with small portion of iron and manganese oxides. The term 'ore' mentioned in the text of item 26 I.C.T. is confined to articles which are in the form of condition in which they are mined. As such, ores in powder form cannot qualify for assessment u/i 26 I.C.T. as they are not in the condition in which they are mined. Further the goods imported are Wolfram Ore Concentrate and not Wolfarm Ore as mixed. Concentration of ore is considered a manufacturing process which will exclude its assessment u/i 26 T.C.T. Three orders were passed by the Assistant Collector because the goods had been imported in three consignments. The matter was taken in appeal to the Appellate Collector of Customs. He disposed of the matter in January 1965. Before him a good deal of evidence was produced both from authoritative books and in the shape of certificates from experts that the goods were metallic ore. The Appellate Collector, however, held that the , 'goods in question were not subjected to simple washing with water but were made of special specifications by "dressing" and are therefore not classifiable as 'ores' ". The appellant then took the matter in revision to the Government. The order of the Government was passed by the Joint Secretary on November 25, 1966. According to his view examination of the sample of goods showed that the goods were in the form of fairly uniform granules. Further they had been separated not only from the rock but also from various other impurities and had been subjected to such processing as would take them out of the category of metallic ore. Thus the correct position was that the goods imported were intermediary articles between ore and metal and had been 'correctly assessed under item

87. The relevant entries in the Import Tariff contained in An- nexure-L of the special leave petition may be set out:

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Item	Name of Article	Nature of Standard	No. duty rate of
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MINERAL PRODUCTS

26. Metallic ores all sorts except ochres and other pig-

ments ores and antimony ore x Free x 70(7)Cobalt chromium tungsten magnesium and all other non-ferrous virgin metals not otherwise specified x Free cified.

SECTION XXII (ARTICIES NOT OTHERWISE SPECIFIED)

87. All other articles not otherwise specified Revenue 60percent ad valcrem"

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The short question that has to be decided is whether Wolfram Ore  $W\text{O}_3$  65% falls within item 26 which covers metallic ores of all sorts with the exceptions mentioned therein. It is and cannot be disputed that Wolfram ore which was imported does not fall within the exceptions. All that had, therefore, to be determined by the authorities was whether such ore was a metallic ore. In Stroud's Judicial Dictionary, Vol. 3 page 2020. It is stated that "ore" is a metal in its crude state separated from the rock. In the well known treatise on TUNGSTEN, its Metallurgy, Properties and Applications by Colin J. Smitbells, 3rd Edition., it is stated that Tungsten ores rarely occur in massive form. These ores are usually found in narrow veins. "The tungsten content of the ore as it is mined is usually 0.5 to 2 per cent., although it amounts to 6 per cent. in rare instances. The concentration of tungsten ores depends chiefly on gravity methods, taking advantage of the high density of the, metal, although floa tation methods are also used. The concentrates, which contain 60-70 per cent  $W\text{O}_3$ " . . . . . . " On page 12 of Smithells' book it is stated that tungstens are sold in Europe under Contracts A and B given in Appendix 1. The form of Contract A in the Ap- pendix reads as follows:--

"Messrs We have this day..... you the following Chinese Wolfram Ore of good merchantable quality, containing minimum 65%  $W\text{O}_3$  ....

The certificate dated January 13, 1965 of Derby & Company contains the following statement :

" In accordance with International Wolfram' Ore Contract 'B' which is the standard form, on which the vast majority of Wolfram ore concentrates are based, such ore of normally acceptable merchantable quality contains a minimum of 65%  $W\text{O}_3$ .

Wolfram bearing material as mined, contains frequently less than 0.5% of  $W\text{O}_3$  and asmuch as a content of 2% of  $W\text{O}_3$  is rare. In order to produce a usable ore

concentration operations are necessary which involve crushing, washing and similar process separating the useless gangue to bring it to a minimum 65%  $WO_3$  content without which it is not regarded as an acceptable wolfram ore or wolfram concentrate and useless to consuming industries. Basic operations bringing the material to such a standard are not a manufacturing process but form part of normal wolframite mining activities".

According to a letter dated February 3, 1965 from the Director of National Metallurgical Laboratory to the Controller of Customs wolfram ore is always selectively mined in the technical terminology. The selectively mined tungsten contains about 7%  $WO_3$ . Such selective mining does not constitute a manufacturing process. Unless selective mining is done the tungsten ore cannot be exported or even sold in the country of its origin. Thus the import of selectively mined tungsten ore containing 65%  $WO_3$  or more should not be regarded as the import of a product which has been manufactured overseas and has passed through the manufacturing process. The expression "selectively mined" means that the wolfram ore is detached and taken out from the rock in which it is embedded and this is done by crushing the rock and sorting out pieces of wolfram either by hand or by washing or magnetic separation. The appellant produced certificates from well known analytical Consulting & Technical Chemists. According to R. V. Briggs & Co who claim to have been analysing various ores and minerals including wolframite for over sixty years this ore is always concentrated as part of the mining operations. The normal method is by washing the crushed ore, thereby freeing the mineral from the gangue. The certificate from Derby & Co. London has already been referred to. Along with the appellants statement of the case an extract from the Brussels Tariff nomenclature has been attached as annexure A. In Chapter XXVI with the heading Metallic Ore etc. para 26.01 deals with Metallic Ores and Concentrates..... The relevant and material portions from these extracts may be reproduced :

"Ores are, seldom marketed before "preparation" for subsequent metallurgical operations. The most important preparatory processes are those aimed at concentrating the ores.

For the purposes of the present hearing, 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.

Processes to which products, physic-chemical or chemical operations, provided that they are normal to the preparation of the ores for the extraction of metal. With the exception of changes resulting from calcination, roasting or firing (with or without agglomeration), such operations must not alter the chemical composition of the basic compound which furnishes the desired metal.

The physical or physico-chemical operations include crushing, grinding, magnetic separation, gravimetric separation, floatation, screening, grading, agglomeration of powers (e.g., by sintering or pelleting) into grains, balls or briquettes (whether or not with the addition of small-quantities of binders), drying, calcination, roasting to oxidise or magnetise the ore, etc. (but not roasting for purposes of sulphating, chloridating, etc.) The chemical processes are aimed at eliminating the unwanted matter (e.g. dissolution)."

Among the ores specifically mentioned to which the labove statement applies is Tungsten "or Wolfram". As against this the only evidence put in by the revenue consisted of the test report of the, Deputy Chief Chemist (Annexure E). After giving the necessary particulars it was stated by him 'that the samples were not ore as mined.

We are wholly unable to comprehend how in order to fall under item 26 the ore has to be ,as mined. There is a good deal of force in the argument of Mr. Setalvad for the appellant that the normally acceptable merchantable quality of wolfram or tungsten contains a minimum 65%  $WO_3$ . This is the unable ore and it is in that sense that it is commercially understood. wolfram ore when mined contains only 5 to 2 per cent  $WO_3$  and in order to make it usable and merchantable ore with minimum 65%  $WO_3$ , concentration is necessary. if items 26 of the Import Tariff is to be restricted to Wolfram being material containing 5 to 2 per cent  $WO_3$  it would be mainly rock which can neither be imported in large quantity and which will have no market. The separating of wolfram ore from the rock to make it usable ore is a process of selective mining. It is not a manufacturing process. The important test is that the chemical structure of the ore should remain the same. Whether the ore imported is in powder or granule form is wholly immaterial. What has to be seen is what is meant in international trade and in the market by wolfram ore containing 60% or more  $WO_3$ . On that there is a preponderation weight of authority both of experts and book,, and of writings on the subject which show that wolfram. ore when detached and taken out from the rock in which it is embedded either by crushing the rock and sorting out pieces of wolfram or by washing or magnetic separation and other similar ,and necessary process it becomes a concentrate but does not cease to be ore. Unless the ore is roasted or treated with any chemical it cannot be classed as processed.

It is common ground that the wolfram ore which was imported by the appellants was never subjected to any process of roasting or treatment with chemicals to remove the impurities. It thus remained wolfram ore concentrate containing 65%  $WO_3$  which was of the merchantable quality and was known commercially as such and imported as ore. Apart from all this it must be remembered that in interpreting items in Taxing Statutes resort should be had not to the scientific or technical meaning but to the meaning attached to them by those dealing in them in their commercial sense. There can, therefore. be no manner of doubt that the goods imported by the appellants fell within item 26 of the Import Tariff and no duty was leviable on them. The appellants were entitled to the refund of the amounts which were paid by them by way of duty.

For the reasons given above the appeals are allowed with costs and the impugned orders including that of the Central Government dated 25/29th November 1966 are hereby set aside. The respondents are directed to make appropriate orders for refunding the amounts collected from the appellants by way\_ of duty on the goods in question. One hearing fee.

S.B.W.

Appeals allowed.