M/S Star Industries vs Commissioner Of Customs(Imports) ... on 7 October, 2015

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Bench: Rohinton Fali Nariman, A.K. Sikri

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6088 OF 2013

M/S STAR INDUSTRIES	.....APPELLANT(S)	
VERSUS		
COMMISSIONER OF CUSTOMS (IMPORTS), RAIGAD	.....RESPONDENT(S)	

J U D G M E N T

A.K. SIKRI, J.

The appellant (hereinafter referred to as the 'assessee') is engaged in the manufacture of Ferro-Alloys falling under Chapter 72 of Central Excise Tariff. One of the inputs for manufacture of Ferro-Alloys is Roasted Molybdenum Ore/Concentrate. The assessee has been regularly importing the aforesaid material i.e. Roasted Molybdenum Ore/Concentrate (hereinafter referred to as the 'Ore Concentrate').

It is not in dispute that the import of Ore Concentrate is, otherwise, subject to additional duty of custom i.e. countervailing duty (CVD) in addition to normal custom duty. However, vide Notification No. 4/2006-CE dated March 01, 2011, which is a general exemption notification, various items, either fully or partially, exempted from payment of excise duty. One of the items described in this notification is 'Ores' which is mentioned at Sl. No.4 and the excise duty payable is Nil. In case, the aforesaid goods imported by the assessee, namely, 'Ore Concentrate' falls within the aforesaid entry, as a fortiori, no CVD would be payable on the import of this item. The question, therefore, that arises is as to whether the 'Ore Concentrate' imported by the assessee is eligible for complete exemption from payment of additional duty of custom/CVD under Notification No.4/2006-CE dated March 01, 2006. The answer to the aforesaid question would depend upon the answer to another incidental question, namely, whether the 'Ore Concentrate' imported by the

assessee can be treated as 'Ores' mentioned in Notification No.4/2006. To put it otherwise, whether Molybdenum Ore after it undergoes the process of being roasted and comes to be known as Ore Concentrate still remains Ores.

Before we attempt to answer the aforesaid question(s), we deem it apposite to visit those fundamental facts that will have bearing on the issue involved.

The assessee has been regularly importing Ore Concentrate and claiming the benefit of the aforesaid Notification No.4/2006-CE. The Customs Department had been extending this benefit. As a result, no CVD was levied under Section 3(1) of the Custom Tariff Act, 1975. However, according to the Department, the Directorate of Revenue Intelligence (DRI) received some information indicating that the assessee was misdeclaring the product as 'Molybdenum Ore' or 'Roasted Molybdenum Ore' and on that basis, seeking benefit of exemption under Notification No.4/2006-CE. According to them, Roasted Molybdenum Ore was, in fact, Ore Concentrate which was different from 'Ores' and, therefore, benefit of said Notification No.4/2006-CE was not available to the assessee. Based on the above intelligence, two consignments of the assessee imported under B/E No.4567406 dated September 06, 2011 and 4551981 dated September 05, 2011 were detained for examination on September 14, 2011. Examination of the goods revealed that in respect of B/E No.4567406 dated September 06, 2011, the bags in which the goods were packed contained labels/marking which read as 'Roasted Molybdenum Concentrate'. In respect of B/E No.4551981 dated September 05, 2011, the markings were 'Molybdenum Sulfide (MoS2) Roasted. Samples of the products under importation were drawn and sent for chemical examination to Chemical Examiner, CRCL, Vadodara. On that basis, the goods/consignment was seized on September 26, 2011 under the provisions of Section 110 of the Customs Act, 1962 on the reasonable plea that they are liable to confiscation under Section 111 of the said Act.

Statement of Shri Babu Khandelwal, Partner of the assessee-firm was recorded under Section 108 of the Customs Act, wherein, he, inter alia, admitted that the goods under import were Roasted Molybdenum Ore Concentrates which they procured from M/s Glencore, Switzerland and M/s Thompson Creek Metals, USA. He further admitted that natural ores and ore concentrates are distinct commodities in terms of composition and concentrates are value added products and the Molybdenum content in the roasted molybdenum ore is in the range of 56% to 65%. He further stated that they have declared the goods as Roasted Molybdenum Ore as per the description given in the invoices. He also agreed with the test reports given by the Chemical Examiner. As regards CVD exemption under Notification 4/2006-CE, Shri Khandelwal stated that since ores include concentrates, he had claimed the exemption. He also agreed to pay the CVD involved in respect of the imports made under the aforesaid Bills of Entry. The seized goods valued at Rs.6,12,60,943/- were released provisionally to the assessee on execution of a bond for the said value and bank guarantee of Rs.61,26,200/-. The assessee also paid the differential duty of Rs.66,61,664/- on October 04, 2011. The investigation further revealed that the assessee had imported identical goods earlier also under 14 B/Es by declaring the goods as 'Molybdenum Ore/Roasted Molybdenum Ore' and availing CVD exemption totally amounting to Rs.3,10,73,035/- during the period March, 2011 to July, 2011.

The Department, thereafter, issued a show cause notice dated March 09, 2012 to the assessee proposing to confiscate 59,000 kgs. of Roasted Molybdenum Ore Concentrate seized on September 26, 2011 valued at Rs.6,12,61,048/- and 275000 kgs. of the said goods valued at Rs.28,57,49,418/- imported earlier under 14 Bills of Entry, under the provisions of Sections 111(d) and 111(m) of the Customs Act, 1962. The notice also proposed to demand differential duty amounting to Rs.66,61,664/- on the seized goods and Rs.3,10,73,035/- on the goods imported earlier, under the provisions of Section 28(1) of the Customs Act along with interest thereon under Section 28AA apart from penalties on the assessee under Sections 114A and 112(a) of the Customs Act.

After adjudication, order was passed confirming the demand raised in the show cause notice which covered the period from March, 2011 to September, 2011. The importation seized and realised earlier provisionally was confiscated under Sections 111(d) and 111(m) of the Customs Act with an option to redeem the same on payment of fine of Rs.1 crore under Section 125 of the said Act and those imported earlier was liable for confiscation under the same provisions in respect of which differential duty demand of Rs.66,61,664/- and Rs.3,10,73,035/- were confirmed by denying the benefit of CVD exemption along with interest under Section 28AA of the Customs Act. A penalty of equivalent amount was also imposed on the assessee under Section 114A of the said Act.

Aforesaid order was challenged by the assessee in the form of an appeal before the Custom Excise and Service Tax Appellate Tribunal (CESTAT), Mumbai Bench. Vide impugned decision dated February 08, 2013, the CESTAT has concurred with the opinion of the adjudicating authority on the merits of the case. However, partial relief is granted only to the effect that confiscation of goods under Section 111(d) of the Customs Act was improper and order to that extent is set aside with consequential order of setting aside the imposition of redemption fine under Section 125 and penalty under Section 112(a)/114A of the Customs Act. The outcome of the appeal is summed up in para 8, which reads as under:

> "8. To sum up, we uphold the duty demand and interest thereon under the provisions of Sections 28 of the Customs Act along with interest thereon under Section 28AA. However, we set aside the confiscation of the goods under Section 111 of the said Act and imposition of redemption fine under Section 125 and penalty under Section 114A ibid." Before we proceed further, it is pertinent to point out that the instant appeal was tagged with Civil Appeal No.1036 of 2007 titled Commissioner of Customs (Imports) v. M/s. Hindustan Gas and Industries Ltd. That was an appeal which related to the period from September 02, 1998 to October, 1999. The issue was identical inasmuch as there also the importer had imported Molybdenum Concentrate and claimed benefit of exemption Notification No. 5/1998-CE which was prevalent at the material time and it exempted 'Ore' vide Sl. No.10 of the said notification from payment of excise duty. There also the adjudicating authority had taken the view that after the Molybdenum Ore was subjected to the process of Concentratic and Roasting it had become a different product, namely, Molybdenum Oxide and did not remain 'Ore' and, therefore, was not entitled to the benefit of exemption notification which applied only to the commodity 'Ore'. In an appeal, however, same Mumbai Bench of CESTAT set aside the order of the adjudicating

authority holding that even after Molybdenum Ore had undergone the process of Roasting, it remained Ore and there was no difference between Ore and Concentrate which were one and the same product. We would like to mention that though we have dismissed the appeal of the Revenue against the aforesaid order of the CESTAT on the ground that the tax effect involved in the said appeal is negligible, it would be necessary to understand the reason which prevailed with the CESTAT to record the finding that Concentrate is to be understood as nothing but enriched and prepared ore meaning thereby it remains the same product, namely, 'Ores' even after the aforesaid processing of Roasting. Before discussing this order and to understand the implication thereof in an appropriate manner, it is necessary to point out the tariff entries and all relevant provisions of the exemption notification.

Chapter 26 of the Central Excise Tariff Act, 1985 deals with 'Ores, Slag and Ash Notes'. Tariff Item 2601 thereof gives the description of goods falling in the said item as 'Iron Ores and Concentrates including Roasted Iron Pyrites'. It contains certain Chapter Notes, Note 2 thereof with which we are concerned is to the following effect:

“2. For the purposes of headings 2601 to 2617, the term “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. Headings 2601 to 2617 do not, however, include minerals which have been submitted to processes not normal to the metallurgical industry.” There was an amendment in the said Chapter in the year 2011, whereby, inter alia, Chapter Note 4 was added, which reads as under:

“4. In relation to products of this Chapter, the process of converting ores into concentrates shall amount to “manufacture”.

Description of Tariff Item 2601, however, remained the same. We would, however, like to refer to sub-item 2613 which was also on the identical terms as in the original Chapter 26, which reads as under:

Tariff Item	Description of goods	Unit	Rate of duty
2613	Molybdenum ores and concentrates		
2613 10 00	-Roasted	kg.	12%
2613 90 00	-Other	kg.	12%

It would also be useful, at this stage, to mention about general exemption Notification No.4/2006. Same was issued in exercise of powers conferred upon the Central Government by sub-section (1) of Section 5A of the Central Excise Act in the public interest, thereby exempting excisable goods of the description specified in column (3) of the table below read with the relevant List appended hereto. Item 3 thereof reads as under:

S. No.	Chapter or heading or sub-heading or tariff item of the First Schedule	Description of excisable goods	Rate	Condition No.
4.	2601 to 2617	Ores	Nil	-

We would like to point out that the amendment which was carried out in the year 2011 basically related to addition of Chapter Note 4 as per which the process of converting Ores into Concentrates is treated as 'manufacture'.

Having taken note of the relevant statutory/legal provisions, we revert back to the orders passed by the CESTAT in M/s. Hindustan Gas and Industries Limited case. While discussing this decision of the CESTAT, it is to be borne in mind that Chapter Note 4 was not there at the relevant time when this decision was rendered in December, 2006.

It is settled position that for the purpose of determining the levy of CVD under Section 3 of the Customs Tariff Act, it is to be deemed that the product that was imported was manufactured in India and thereafter rate of central excise duty leviable thereupon is to be determined. That duty becomes the CVD i.e. the additional duty on the import of the item. This position stands settled by the Constitution Bench judgment of this Court in Hyderabad Industries Limited and another v. Union of India and others[1]. Two implications follow from the aforesaid judgment, namely, (i) if the process by which concentrate obtained does not amount to manufacture in India, then the imported concentrate would also not be subjected to CVD, and (ii) if the goods are manufactured or produced in India, are exempted or at Nil rate of duty due to any excise exemption notification, the imported goods would be subjected to Nil rate of CVD.

The Tribunal in Hindustan Gas case held that roasting of an ore, to obtain concentrate, does not amount to manufacture, especially because of the reason that roasting is a process by which impurities in the ore are removed and the recoverable content of metal oxide is enhanced. The Tribunal also held that the product in question attracted 'Nil' duty as it was covered by exemption notification because of the reason that Ore and Concentrate are one and the same and hence entitled to the exemption. While answering the two questions in the aforesaid manner, the Tribunal explained the process of Concentrate. For this purpose, it referred to Kirk-Othmer's Encyclopedia of Chemical Technology, Vol. 16, Page 315, Concentrate and Ore are defined as under:

“Concentrate is an action to intensify in strength or purity by the removal of valueless or unneeded constituents, i.e. separation of ore or metal from its containing rock or earth. The concentration of ores always proceeds by steps or stages. Liberation of

mineral values is often the initial step. Concentrate also means a product of concentration i.e. enriched ore after removal of waste in a beneficiation mill.

Ore. A mineral or aggregate of minerals from which a valuable constituent, especially a metal, can be recovered at a profit." Having regard to the aforesaid definitions, the Tribunal opined that the term Concentrate has to be understood as nothing but enriched and prepared ore. The Tribunal, thereafter, relied upon judgment of this Court in Minerals and Metals Trading Corporation v. Union of India and others[2]. That was a case where the assessee had imported Wolfram Concentrate having minimum 65% Tungsten Oxide. The assessee had contended that Wolfram Concentrate is an ore and, therefore, classifiable under Item 26. This contention of the assessee was accepted by this Court in the following words:

"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 been to be seen is what is meant in international trade and in the market by wolfram ore containing 60% ore more WO3. On that there is a preponderation weight of authority both of exports and books 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 treated with any chemical it cannot be classified as process".

The Tribunal also took note of some more judgments wherein removal of impurities from a mined product was not treated as manufacturing process. On that basis, the Tribunal came to the conclusion that roasting of an ore, to obtain concentrate, does not amount to manufacture, as it only removed the impurities and the recoverable content of metal oxide is enhanced thereby. Thus, ore and concentrate are one and the same as concentrate remains ore and only impurities were removed therefrom. Again, referring to the judgment of this Court in MMTC (supra), the Tribunal made the following observations:

"...Therefore, 'Ore' is genus and 'Concentrate' is species. Therefore, under Central Excise exempting ore concentrates of ores would also be exempted. Sl. No.10 of Notification No. 5/98-CE grants unconditional exemption to ores falling under Heading 26.01 to 26.17. Applying the decision of the Supreme Court in MMTC's case, the expression 'ores' in the notification will include 'concentrates' also. The mention of ores and concentrates separately in Heading 26.03 does not go against the above arguments. Even when an entry does not mention concentrate but refer only to ore, the Supreme Court in MMTC case holding that concentrate will be classified as ores will therefore, applying same principle while construing the word 'ore' appearing in the Notification No. 5/98 will call for coverage of the concentrate. It is clear from the

judgment of Supreme Court in MMTC's case, that 'ore' is genus and 'concentrate' a species. Therefore, separate mention of 'ore' and 'concentrate' in Heading 26.03 ipsofacto will not imply they are different. Therefore, term 'ore' covered by Notification No. 5/98 can apply to 'concentrate' also." Thereafter, it specifically referred to Note 2 of Chapter 26 and held that said Note also supported the view taken by the Tribunal by pointing out that as per Note 2, 'Ores' means minerals of mineralogical species actually used in the metallurgical industry for the extraction of mercury of the metals, inter alia, of Section XIV to XV and discussed the implication of this Note in the following words:

"The use of the imported goods is for recovery of metal. Thus, the primary condition of Note 2 of Chapter 26 viz. the imported goods are used for the metals of Section XV, is satisfied, the second condition of Note 2 of Chapter 26 is also satisfied inasmuch as the imported concentrate had not been subjected to process not normal to the metallurgical industry. The department, in fact, has stated in the ground of appeal that by virtue of Note 2 to Chapter 26, the goods have been classified under Heading 2613.10. Therefore, concentrate in question when it satisfies and is covered under term 'ore' as given in Chapter Note 2. The above definition of 'ore' mentioned in Note 2 of Chapter 26 will also apply to appearing in S. No. 10 of Notification No. 5/98-CE." As per the aforesaid decision of the Tribunal which had followed judgment of this Court in MMTC, roasting of ore and thereby removing the impurities from the ore made the ore known as concentrate but it was still covered by the genus ore and concentrate was only a specie of this genus. This process did not amount to any manufacture and, therefore, no new item, commercially known, come into existence.

Mr. Adhyaru, learned senior counsel appearing for the Revenue submitted that the aforesaid decision was rendered in the context of unamended Chapter 26 and this was before the addition of Chapter Note 4. He pointed out that judgment in MMTC was also of the same vintage. According to him, addition of Note 4 to Chapter 26 made fundamental difference, thereby, rendering the decision of MMTC and the aforesaid decision of CESTAT in M/s. Hindustan Gas and Industries Limited inoperative for the purposes of present case. He vehemently argued that the aforesaid decisions proceeded on the basis that roasting of an ore to obtain concentrate does not amount to manufacture. This basis was knocked off with the insertion of Chapter Note 4, thereby, introducing a fictional element, namely, treating the process of converting ores into concentrate as 'manufacture'. He, thus, was emphatic in his submission that now conversion of ore into concentrate was treated as manufacture and, therefore, the concentrate could not be treated as same product as ore and it had transformed into an altogether different product. On that basis, he proceeded to build up his case by submitting that Tariff Item 2601 which describes the goods as 'iron ores and concentrates, including roasted iron pyrite' clearly treated the two items differently i.e. iron ore on the one hand and concentrate on the other. He also submitted that Tariff Item 2613 to which this product specifically related also gives the description as 'Molybdenum Ores and Concentrates' which would again mean

that Molybdenum Ore was different from concentrate and two were distinct items. In the same hue, his further submission was that exemption notification 4/2006 exempted only 'ores' and did not exempt 'concentrate'. He argued that when the Tariff Entry 2613 mentioned ores and concentrates but the exemption notification exempted only 'ores' with conspicuous absence of concentrate, such an exemption notification was to be given strict interpretation and even if two views were possible, the view which favours the Revenue had to be preferred while interpreting exemption notification.

On this basis, grounding his plea on Chapter note 4, he made a passionate plea that the impugned decision in appeal took into consideration the aforesaid significant change in law with the addition of Note 4 and decided the issue in correct perspective. He specifically referred to the following discussion in the impugned order wherein ores and concentrates were treated as two different products, which reads as under: “From the tariff description given above, the tariff uses the expression “ores and concentrates”. Further wherever the tariff wanted to prescribe different classification, separate sub-headings have been provided. For example, in the case of Iron ore, separate sub-headings have been provided for iron ore lumps, iron ore fines and iron ore concentrates. From the above structure, it is clear that the use of the expression 'ores and concentrates' and provision of separate sub-headings of ores and concentrates wherever necessary, implies that the legislature consciously made a distinction between 'ores' on the one hand and 'concentrates' on the other. The preposition “and” between the two terms is conjunctive. If the legislative intention is that ores and concentrates are one and the same, then the legislature would have used the expression “ores and concentrates.” In the book Principles of Statutory Interpretation, 12th Edition 2010, Justice G.P. Singh at pages 477 and 478 has written as under:

“Conjunctive and Disjunctive Words 'OR' and 'AND' The word 'or' is normally disjunctive and 'and' is normally conjunctive but at times they are read as vice versa to give effect to the manifest intention of the Legislature as disclosed from the context. (Ishwar Singh Bindra v. State of U.P., AIR 1968 SC 360, p. 363 : (1980) 1 SCC 158; R.S. Nayak v. A.R. Antulay (1984) 2 SCC 183, pp. 224, 225 : AIR 1984 SC 684; M. Satyanarayana v. State of Karnataka (1986) 2 SCC 512, p. 515 : AIR 1986 SC 1162). As stated by SCRUTTON L.J.: “You do sometimes read 'or' as 'and' in a statute. But you do not do it unless you are obliged because 'or' does not generally mean 'and' and 'and' does not generally mean 'or' (Green v.

Premier Glynrhonwy Slate Co. (1928) 1 KB 561, p. 568, Nasiruddin v. State Transport Appellate Tribunal, AIR 1976 SC 331 p. 338 : (1975) 2 scc 671; Municipal Corporation of Delhi v. Tek Chand Bhatia, supra; State (Delhi Administration v. Puran Mal (1985) 2 SCC 589 : AIR 1985 SC 741.

And as pointed out by LORD HALSBURY, the reading of 'or' as 'and' is not to be resorted to, “unless some other part of the same statute or the clear intention of it requires that to be done.” (Mersey

Docks and Harbour Board v. Henderson Bros. (1888) 13 AC 595 (HL) p. 603. See further, Puran Singh v. State of M.P., AIR 1965 SC 1583 p. 1584, (para 5); Municipal Corporation of Delhi v. Tek Chand Bhatia, supra.

But if the literal reading of the words is less favourable to the subject provided that the intention of the legislature is otherwise quite clear. [A.G. v. Beauchamp (1920) 1 KB 650; R. v. Oakes (1959) 2 All ER 92]" In the case before us, the expression used is "ores and concentrates" and the tariff itself has provided separate sub-headings for these items, wherever it so wanted. Thus the legislative intent is very clear, that is to treat 'ores' and 'concentrates' as distinct and different commodities.

xx xx xx From the principles of statutory interpretation as explained by this Court and applying these to the facts of the present case, the only reasonable conclusion that can be reached is that the legislature intended to treat 'ores' and 'concentrates' distinctly and differently. Otherwise, there was no need for the legislature to employ these two terms with a conjunctive 'and' in between. If one treats ores and concentrates synonymously, as argued by the learned counsel for the appellant, that would render the term "concentrate" redundant which is not permissible." He also impressed upon this Court to keep in mind the purpose of treating the process of roasting a manufacturing process which was to bring the said product, namely, concentrate within the sweep of central excise levy.

The endeavour of Mr. Lakshmikumaran, learned counsel appearing for the assessee, on the other hand, was to demonstrate that addition of Note 4 had not made any difference to the legal position. He submitted that the basic concept underlined in MMTC case remained the same which was that ore is genus and concentrate is only a specie and, therefore, even if it is now to be treated as 'manufacture', still for the purpose of applying exemption notification concentrate would still be covered by umbrella term, 'ore' of which it was a specie. He reiterated that roasting of ore was only to remove impurities so that it could be used in the manufacture of Ferro- Alloys. He also argued that even 'roasted ore' was in Chapter Heading 26 and the process, as defined in the technical dictionaries, makes it only an enriched ore. He further argued that Chapter Note 2, which was the basis of decision in the case of M/s. Hindustan Gas and Industries Limited still occupies the field in the statute book, viz., Chapter 26 and reading thereof makes it amply clear that ore and concentrate are one and the same product. He submitted that in the impugned order, the Tribunal has only considered Chapter Note 4 added by amendment in 2011 and altogether omitted to discuss the implication of Chapter Note 2 which rendered the impugned decision as erroneous. He also argued that the basic principle enshrined in MMTC judgment, namely, ore is genus and concentrate is specie, still remains valid even after the addition of Chapter Note 4.

We have thoughtfully considered the respective arguments of counsel for both the parties.

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-CE 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'.

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-CE. 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.

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.

Once the aforesaid legal repercussions are taken note of, as a fortiori, it becomes obvious that Notification No. 4/2006-CE 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. 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.

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-CE 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-CE 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.

In M/s. Navopan India Ltd., Hyderabad v. Collector of Central Excise and another[3], this principle of interpretation of an exemption notification was summarised in the following words:

> "We are, however, of the opinion that, on principle, the decision of the Court in Mangalore Chemicals -and in Union of India v. Wood Papers, referred to therein -represents the correct view of law. The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee -assuming that the said principle is good and sound -does not apply to the construction of an exception or an exempting provision; they have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State. This is for the reason explained in Mangalore Chemicals and other decisions, viz., each such exception/exemption increases the tax burden on other members of the community correspondingly. Once, of course, the provision is found applicable to him, full effect must be given to it. As observed by a Constitution Bench of this Court in Hansraj Gordhandas v. H.H. Dave, (1969) 2 SCR 253 that such a Notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification, i.e., by the plain terms of the exemption." Without multiplying the case-law, we refer to the latest judgment of this Court in IVRCL Infrastructure & Projects Ltd. v. Commissioner of Customs, Chennai[4] wherein this principle is reiterated in the following manner:
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> "4. ...We have heard learned Counsel for the parties. We find that the first argument made by Shri Lakshmikumaran can be disposed of immediately. The subject matter before us is an exemption notification issued under Section 25 of the Customs Act, 1962. The interpretative notes that have been referred to by Shri Lakshmikumaran are in the Customs Tariff Act. Note 2(a) referred to by Shri Lakshmikumaran reads as follows:

"2.(a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or dis-assembled." It is clear that such note will have no application to an exemption notification which is issued under Section 25 of the Customs Act. Therefore, the fact that an unassembled plant which is incomplete but which has the essential character of a complete plant is not the test to be applied in the present case. On the other hand, the applicable test would be what has been laid down in a catena of decisions. Two such decisions will suffice. In Commissioner of Customs (Imports), Mumbai v. Tullow India Operations Ltd. (2005) 13 SCC 789 = 2005 (189) E.L.T. 401 (S.C.), this Court held:

"34. The principles as regards construction of an exemption notification are no longer res integra; whereas the eligibility clause in relation to an exemption notification is given strict meaning where for the notification has to be interpreted in terms of its language, once an assessee satisfies the eligibility clause, the exemption clause therein may be construed liberally. An eligibility criteria, therefore, deserves a strict construction, although construction of a condition thereof may be given a liberal meaning." Similarly in G.P. Ceramics Private Limited v. Commissioner, Trade Tax, Uttar Pradesh, (2009) 2 SCC 90, this Court held:

"29. It is not a well-established principle of law that whereas eligibility criteria laid down in an exemption notification are required to be construed strictly, once it is found that the applicant satisfies the same, the exemption notification should be construed liberally. [See CTT v. DSM Group of Industries, (2005) 1 SCC 657 (SCC para 26); TISCO v. State of Jharkhand (2005) 4 SCC 272 (SCC paras 42 to 45); State Level Committee v. Morgardshammar India Ltd. (1996) 1 SCC 108; Novopan India Ltd. v. CCE & Customs (1994 Supp. (3) SCC 606); A.P. Steel Re-Rolling Mill Ltd. v. State of Kerala (2007) 2 SCC 725 and Reiz Electrocontrols (P) Ltd. v. CCE (2006) 6 SCC 213." Judged by this test, it is clear that a hot mix plant of the type mentioned alone is exempt from payment of Customs duty. Obviously, what is meant is that such plant in its entirety must be imported albeit in an unassembled form. Judged by this test, it is clear that the concurrent findings of fact of the Commissioner and the CESTAT requires no interference by the Court inasmuch as both authorities have held that a complete plant in an unassembled form has not in fact been imported..." The Tribunal in the impugned judgment has also examined the issue keeping in view the objective behind the levy of CVD. Such a discussion proceeds as under:

"It will be useful at this juncture to examine the object of levy of additional Customs duty (CVD). This issue was examined at great length by this Court in the case of Hyderabad Industries Ltd. v. Union of India[5] and this Court held as follows:

"15. The Customs Tariff Act, 1975 was preceded by the Indian Tariff Act, 1934. Section 2A of the Tariff Act, 1934 provided for levy of countervailing duty. This section stipulated that any article which was imported into India shall be liable to customs duty equal to the excise duty for the time being leviable on a like article if produced or manufactured in India. In the notes to clauses to the Customs Tariff Bill 1975 with regard to clause 3 it was stated that "Clause 3 provides for the levy of additional duty on an imported article to counter-balance the excise duty leviable on the like article made indigenously, or on the indigenous raw materials, components or ingredients which go into the making of the like indigenous article. This provision corresponds to section 2A of the existing Act, and is necessary to safeguard the interests of the manufacturers in India." Apart from the plain language of the Customs Tariff Act, 1975 even the notes to clauses show the legislative intent of providing for a charging section in the Tariff Act, 1975 for enabling the levy of additional duty to be equal to the amount of excise duty leviable on a like article if produced or manufactured in India. Even though the impost under Section 3 is not called a countervailing duty, there can be little doubt that this levy under Section 3 of the Customs Tariff Act has been enacted to provide for a level playing field to the present or future manufacturers of the like articles in India." (emphasis supplied) This object of levy has to be kept in mind while interpreting notification No. 4/2006-CE for the purposes of levy of CVD on concentrates. If the domestic manufacturer of concentrates is liable to pay excise duty on conversion of 'ores' into 'concentrates' in terms of Note 4 to Chapter 26, can his interests be sub-served when concentrates imported into India are not levied to CVD at the same rate by interpretation of Notification No. 4/2006 so as to construe that ores includes 'concentrates' and, therefore, no CVD is leviable. In our humble view, such an interpretation militates against the interests of domestic producers and also the plain language of the notification. Accordingly we hold that the benefit of exemption under Notification No. 4/2006-CE will not be applicable to 'concentrates' imported from abroad." It was submitted by the learned counsel for the assessee that the entire exercise is Revenue neutral because of the reason that the assessee would, in any case, get Cenvat credit of the duty paid. If that is so, this argument in the instant case rather goes against the assessee. Since the assessee is in appeal and if the exercise is Revenue neutral, then there was no need even to file the appeal. Be that as it may, if that is so, it is always open to the assessee to claim such a credit.

We, thus, do not find any merit in this appeal and dismiss the same with cost.

.....J. (A.K. SIKRI) .....J. (ROHINTON FALI NARIMAN) NEW DELHI;

OCTOBER 07, 2015.

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[1] (1999) 5 SCC 15 [2] (1972) 2 SCC 620 [3] 1994 (73) ELT 769 (SC) [4] 2015 (319) ELT 194 (SC) [5] 1999 (108) ELT 321 (SC)