

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

REGIONAL BENCH - COURT No. I

1. Excise Appeal No.41018 of 2014

(Arising out of Order-in-Appeal No.22 & 23/2014, dated 04.03.2014 passed by the Commissioner of Central Excise (Appeals), 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai 600 034).

M/s. Ashok Leyland Ltd.
No.1A, Kathivakkam High Road
Ennore, Chennai 600 057
Chennai

...Appellant

VERSUS

Commissioner of GST & Central Excise
Chennai North Commissionerate
No.26/1, Mahatma Gandhi Road
Nungambakkam, Chennai 600 034

...Respondent

WITH

2. Excise Appeal No.41028 of 2014

(Arising out of Order-in-Appeal No.22 & 23/2014, dated 04.03.2014 passed by the Commissioner of Central Excise (Appeals), 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai 600 034).

M/s. Ashok Leyland Ltd.
No.1A, Kathivakkam High Road
Ennore, Chennai 600 057
Chennai

...Appellant

VERSUS

Commissioner of GST & Central Excise
Chennai North Commissionerate
No.26/1, Mahatma Gandhi Road
Nungambakkam, Chennai 600 034

...Respondent

WITH

3. Excise Appeal No.40017 of 2015

(Arising out of Order-in-Appeal No.77/2014 dated 10.10.2014 passed by the Commissioner of Central Excise (Appeals), 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai 600 034).

M/s. Ashok Leyland Ltd.

No.1A, Kathivakkam High Road
Ennore, Cehnnai 600 057
Chennai

...Appellant

VERSUS

Commissioner of GST & Central Excise

Chennai North Commissionerate
No.26/1, Mahatma Gandhi Road
Nungambakkam, Chennai 600 034

...Respondent

WITH

4. Excise Appeal No.41752 of 2015

(Arising out of Order-in-Appeal No.143/2015 (CXA-I), dated 25.06.2015 passed by the Commissioner of Central Excise (Appeals-I), 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai 600 034).

M/s. Ashok Leyland Ltd.

No.1A, Kathivakkam High Road
Ennore, Cehnnai 600 057
Chennai

...Appellant

VERSUS

Commissioner of GST & Central Excise

Chennai North Commissionerate
No.26/1, Mahatma Gandhi Road
Nungambakkam, Chennai 600 034

...Respondent

WITH

5. Excise Appeal No.41901 of 2016

(Arising out of Order-in-Appeal No.146/2016 (CXA-II), dated 27.07.2016 passed by the Commissioner of Central Excise (Appeals-I), 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai 600 034).

M/s. Ashok Leyland Ltd.

No.1A, Kathivakkam High Road
Ennore, Cehnnai 600 057
Chennai

...Appellant

VERSUS

Commissioner of GST & Central Excise

Chennai North Commissionerate
No.26/1, Mahatma Gandhi Road
Nungambakkam, Chennai 600 034

...Respondent

AND

6. Excise Appeal No.41516 of 2017

(Arising out of Order-in-Appeal No.113/2017 (CXA-I), dated 28.04.2017 passed by the Commissioner of Central Excise (Appeals-I), 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai 600 034).

M/s. Ashok Leyland Ltd.

No.1A, Kathivakkam High Road
Ennore, Cehnnai 600 057
Chennai

...Appellant

VERSUS

Commissioner of GST & Central Excise

Chennai North Commissionerate
No.26/1, Mahatma Gandhi Road
Nungambakkam, Chennai 600 034

...Respondent

APPEARANCE:

Shri M. Kannan, Advocate for the Appellant

Shri M. Selvakumar, Authorised Representative for the Respondent

CORAM :

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NOs.40826-40831/2024

DATE OF HEARING : 21.06.2024

DATE OF DECISION : 09.07.2024

ORDER : [PER HON'BLE MR. P. DINESHA]

These appeals are filed by the appellant against the following passed by the Commissioner of Central Excise (Appeals), Chennai.

- (i) Order-in-Appeal No.22 & 23/2014, dated 04.03.2014
- (ii) Order-in-Appeal No.77/2014 dated 10.10.2014
- (iii) Order-in-Appeal No.143/2015 (CXA-I), dated 25.06.2015
- (iv) Order-in-Appeal No.146/2016 (CXA-II), dated 27.07.2016
- (v) Order-in-Appeal No.113/2017 (CXA-I), dated 28.04.2017

2. Brief facts as could be gathered from the impugned order are that the appellant is engaged in the manufacture of Castings of Iron and Aluminum falling under Chapter 73 & 76 of the First Schedule to Central Excise Tariff Act, 1985 ('CETA' for short). It is the case of the revenue that during the audit of books of the appellant, they appear to have noticed that the appellant had cleared 'Black Sand' without payment of Central Excise Duty since according to them, the same is produced during the course of manufacture of cast Articles of Iron, which was capable of being bought and sold in the market for consideration. This prompted the issuance of 2 show-cause Notices for 2 periods viz., 03/2008 to 12/2010 and 01/2011 to 12/2011. It is the further case of the

revenue that 'Black Sand' finds place in Schedule to the CETA under sub-heading 26190090 and hence the same is an excisable goods. Consequent duty was proposed to be demanded, along with applicable interest and penalty.

3. The appellant appears to have filed detailed replies to the above SCNs explaining *inter alia* the process of their manufacturing activity during which the natural sand turns out black due to the temperature in the furnace/casting area and is no different from the natural sand.

4. The Adjudicating Authority after considering the arguments of the appellant, confirmed the demands proposed in both the SCNs vide

- (i) Order in Original No.33/2012, dated 30.11.2012
- (ii) Order in Original No. 20/2011, dated 23.12.2011
- (iii) Order in Original No. 02/2013, dated 31.01.2013
- (iv) Order in Original No. 03/2014, dated 06.03.2014
- (v) Order in Original No 02/2015, dated 03.06.2015
- (vi) Order in Original No 06/2016, dated 12.04.2016.

Aggrieved by the above demands, it appears that the appellant filed appeals before the first appellate authority. The First appellate authority in the

impugned order refers to the definition of 'Manufacture' as appearing in the Explanation to section 2 (d) of the Central Excise Act, 1944, refers to the classification under first schedule to CETA wherein, black sand is specifically classified under sub-heading 2619 0090, refers to a test report of chemical engineer, Customs House, Chennai wherein it is said to have reported that black sand is used in various applications like Asphalt concreting, compost additive concrete, manufacture of Portland cement, mineral wool products, etc. and finally refers to its marketability. According to him, the term 'marketable' would mean that goods are ready and fit for sale and in this context, he refers to the admission of the appellant that the black sand that had emerged was sold to a buyer.

5. The First Appellate Authority thereafter relies on the decision of Apex court in the case of ***Ujagar Paints -Vs- UOI [1988 (38) ELT 535]*** wherein the Apex Court had held that the prevalent and generally accepted test to ascertain that there is manufacture is, whether the change or the series of changes brought about by the application of processes take the commodity to the point where commercially it can no longer be regarded as the original commodity but is instead recognised as a distinct and new article that has emerged because of the result of the processes [para 15].

6. He concludes that black sand is the result of a process, is a distinct product having a distinct name,

character and use and, therefore, the same becomes dutiable.

7. The Ld. First Appellate Authority having thus upheld the demands per common Orders in Appeal, the present appeals are filed before this forum against the same.

8. Shri Kannan, Ld. advocate appeared for the appellant and Shri Selvakumar, Ld. Assistant Commissioner appeared for the Revenue.

9. The case of the appellant is that the Black Sand which is the residue is nothing but the Natural Sand which has become black when used in the course of manufacture of castings and hence, is not a manufactured product, is not even a by-product nor an intermediary product to be subjected to Central Excise duty liability. It was contended that the authorities should have appreciated that the black sand is neither a product nor an intermediate product, is a total waste, which arises during the manufacture of castings and that the natural sand is used in the course of manufacture of castings would become black, while natural sand is not dutiable, Black sand also cannot be subjected to duty. Further, authorities have grossly erred in not at all referring to the following decisions **relied upon:**

- 1. Madras Aluminium Co. Ltd. Vs. Commissioner of Central Excise, Salem, 2006 (193) E.L.T. 98 (Tri. - Chennai)*

2. *Shriram Food and Fertilizers Industries Vs. Collector of C. Ex., New Delhi, 2004 (177) E.L.t.465 (Tri. – Del.)*
3. *Clancey Precision Components Pvt. Ltd. Vs. Commr. Of C.Ex. & Cus., Pune, 2007 (216) E.L.T. 242 (Tri. – Mumbai)*

10. *Per contra*, Ld. departmental representative has supported the findings of the lower authorities. He specifically drew our attention to the findings of the authorities below that 'black sand' finds a specific place in the CETA attracting rate of duty at 12% ad valorem and thus, the duty demand is proper and justified.

11. We have heard both sides and carefully perused the orders of both the lower authorities, we have also gone through the orders and circulars relied upon during the course of arguments; the only issue to be decided by us is, "whether in the facts and circumstances of the case, the authorities below were justified in holding that the black sand that remains, was a manufactured goods, and hence, is dutiable"?

12. To start with, we also refer to the definition of manufacture as per the explanation to **section 2 (d)** which reads as under:

"excisable goods' means goods specified in [fourth schedule] as being subject to a duty of excise and includes salt'.

13. By the above definition, the Ld. First Appellate Authority appears to have held that black sand is 'Goods'. When the First Appellate Authority has held so, nothing is placed on record to indicate the process of manufacture that had resulted in the "Manufacture of black sand" and neither the First Appellate Authority nor the adjudicating authority has brought out anything on record to indicate the ingredients used for the manufacture of black sand. We also do not find anywhere in their orders as to denying the fact that it was the natural sand that turned Black upon being burnt in the furnace. This apart, it is worth observing that the natural sand is clearly a non-dutiable item and hence, the burnt sand which remains could be termed as Black Sand since the same has occurred as 'remains' during the course of manufacture of 'Castings'.

14. Revenue authorities have failed to examine the issue from this perspective. Both the authorities have only proceeded on the basis that the black sand so generated was sold thereafter for a price and therefore, the same is liable to duty, which, according to us is totally unjustified. The authorities have failed to understand that the appellant had to remove the black sand from their factory, since the same was occupying the operating space and while doing so, if the same results in generation of some revenue, that by itself would not amount to process of manufacture of a dutiable product.

15. Appellant has been contending stoutly that the black sand was not a by-product but just a waste

product, which has never been disputed or denied by the authorities.

16. In this context, we find it appropriate to refer to the decision of Apex Court in the case of ***Board of Trustees Versus Collector of Central Excise, A.P. 2007 (216) E.L.T. 513 (S.C.)*** which is relied upon by the appellant. The Supreme Court has in the said case held that in order to constitute goods, twin tests have to be satisfied namely, the process constituting manufacture and secondly, its marketability.

Para 3 of the said judgement is reproduced below:

“3. Therefore, the principal question involved in this civil appeal relates to exigibility of Cement Concrete Armour Units. At the outset we may state each of these units weight is about 50 metric tones. They are like Tripods which also keep the water calm and tranquil. In order to constitute “goods” twin tests have to be satisfied, namely, process constituting manufacture and secondly marketability. In the present case the second test of marketability is in issue. It is well-settled that goods are manufactured with the object of being sold in the market. If the goods are not capable of being sold then the test of marketability is not fulfilled. Further, the burden is on the Department to prove whether there is the process which constitutes manufacture and secondly whether the product is marketable.”

17. The Apex Court has observed that in the said case the second test of marketability was in issue but here in the case on hand, the first test itself is in issue. It is observed by the Apex court that the goods are manufactured with an object of being sold in the market, if the goods are not capable of being sold, then the test of marketability is not fulfilled.

18. Here, in the case on hand before us, it is not the case of the revenue that the object of the Appellant was to manufacture black sand; even if the appellant intended to manufacture black sand, that too using natural sand which by itself is a non-dutiable goods. When the Natural Sand turns out black during the manufacture of castings, it does not lose its character; may be the natural sand turns out 'black' and other than this, we do not see any material differences brought out on record.

19. The other ground in the impugned order is that black sand finds a place in CET. We are afraid, that by itself does not give any room to declare an item as 'manufactured' for the purpose of levy under Central Excise Act. The classification is made to fix tax rate and nothing is brought out on record as to the process of manufacture of the same. Description of the goods in column 2 is clear; it says granulated slag from the manufacture of iron or steel against 2619 in col 1, which refers to slag, dross, scalings and other waste from manufacture of Iron or steel. That means slag, dross, scalings are all 'wastes' generated on account of the manufacturing process of iron or steel. But in the case on hand, black sand is not generated from the manufacture of iron or steel, rather sand which is used 'remains' as sand only but in black colour upon being burnt; it is only the '**remains**' of Natural Sand after losing its '**natural**' colour. Hence, the above argument of the revenue also fails. Further, if the legislative intention was otherwise, then perhaps there was no difficulty for inclusion of 'black sand' also against 2619 along

with Slag, dross, etc . Moreover, it is also held by the Apex court in ***CCE Vs. Markfed Vanaspati & Allied Industries [2003 (153) ELT 491 (SC)]*** that *'.....any goods does not become excisable merely because it falls under a tariff entry, it must be a manufactured product known to the trade as a marketable commodity...'*.

20. In view of the above discussion, we are of the view that the authorities have clearly erred in fastening the appellant with duty liability on Black sand which was not manufactured. Accordingly, we set aside the impugned orders and allow the appeals with consequential benefits, if any, as per law.

21. Ordered accordingly.

(Pronounced in Open Court on 09.07.2024)

(M. AJIT KUMAR)
MEMBER (TECHNICAL)

(P. DINESHA)
MEMBER (JUDICIAL)