

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD**

Division Bench – Court No. – I

**Customs Appeal No. 30106 of 2016
with Customs Cross Application No. 30136 of 2017**

(Arising out of Order-in-Original No. VIZ-CUSTOM-000-COM-005-15-16 dt.20.11.2015
passed by Principal Commissioner of Customs, Visakhapatnam)

Jindal Steel & Power Ltd

2nd Floor, Pawan Commercial Complex, Daba Gardens,
Visakhapatnam, Andhra Pradesh – 530 020

.....**Appellant**

VERSUS

Commissioner of Customs

Visakhapatnam - I

Port Area, Visakhapatnam,
Andhra Pradesh – 530 035

.....**Respondent**

Appearance

Shri Vishal Agarwal, Shri Abhishek Deodhari & Ms. Neha Gulati, Advocates for the Appellant.

Shri M. Anukathir Surya, AR for the Respondent.

**Coram: HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)**

FINAL ORDER No. A/30458/2025

Date of Hearing: 09.06.2025/29.10.2025

Date of Decision: 06.11.2025

[Order per: A.K. JYOTISHI]

M/s Jindal Steel & Power Ltd (hereinafter referred to as the appellant) are in appeal against confirmation of demand of Customs Duty along with confiscation of goods and imposition of redemption fine and penalty by the Adjudicating Authority, vide OIO dt.20.11.2015 (impugned order). The Revenue has also filed Cross Application in the same appeal.

2. The issue involved in this appeal is whether 'coke breeze' imported by the appellant qualifies as 'metallurgical coke' and thereby entitled to exemption under S.No.125 of Notification No.12/2012-Cus dt.17.03.2012 or otherwise. The appellants are operating an integrated steel plant at Raigarh, Chhattisgarh, which comprises of, inter alia, a coke oven plant, sinter plant, blast furnace and steel melting shop, etc. For the purpose of manufacturing of iron and steel, they are using iron ore lumps and fines, metallurgical coke, etc., as primary raw material. The appellants imported certain

quantity of 'Chinese Coke Breeze' (hereinafter referred to as coke breeze), vide two Bills of Entry dt.21.12.2013 and 30.01.2014, which were initially assessed allowing them the exemption claimed under S.No.125 of Notification No.12/2012-Cus from Basic Customs duty & Additional duty leviable under sub-section (1) of section 3 of Customs Tariff Act, 1975. However, on subsequent enquiry by the department, it was felt that the said goods falling under CTH 2704 0090, wherein, they had claimed the exemption, was not admissible as the said exemption notification was only available to 'metallurgical coke'.

3. The department, inter alia, relied on Board Circular No.56/2003 dt.27.06.2003, wherein, it was, inter alia, clarified that metallurgical coke and coke breeze are commercially understood as two different products. Thereafter, they made further enquiry, wherein, they recorded certain statements of the employees of the appellant and also sent the samples to the Custom Chemical Lab for analysis. The chemical examiner, vide its reports dt.24.03.2014, indicated various characteristics of the said breeze including moisture and volatile matter and gave his opinion that based on the test findings and standard literature available in the laboratory, the sample was having the characteristics of coke breeze and it is other than metallurgical coke. The department further asked the chemical examiner to provide the parameters based on which the goods were opined to be classified as other than metallurgical coke and the report received from the chemical lab, inter alia, clarified as follows:

Metallurgical coke and coke breeze, technical information is given below:

As per the IS 439:1989 INDUSTRIAL COKE – SPECIFICATION "Low Ash Metallurgical Coke (LAM Coke) is the solid product of carbonization of coal/coal blends at temperature above 900°C. This includes blast furnace coke and foundry coke having ash content less than 15 percent."

Low Ash Metallurgical Coke (LAM Coke/MET Coke) is solid carbonaceous material obtained from destructive distillation of low ash, low sulphur Bituminous coal. Coke is formed when the coal is heated in the absence of air. Traditionally, chemistry, Size & Strength, have been considered the most important properties for use in the blast furnace coke or foundry coke.

Coke shall conform to the requirements prescribed in Table 1 and Table 2

Table 1 – Requirements for Industrial Coke

S.No.	(1)	i)		ii)				iii)			iv)			
Coke Designation	(2)	Blast Furnace Coke (BFC)		Foundry Coke (FC)				Coke for gas making (GC)			Coke for Ferroalloys industry (FAC)			
Grades	(3)	1	2	Special	1	2	3	1	2	3	Special	1	2	3
Ash % Max	(4)	22	25	20	20	20	20	22	25	90	20	22	25	30
Moisture % Max	(5)	4	4	4	4	4	4	6	6	6	5	5	5	5
Volatile Matter % Max	(6)	1.3	1.3	2.0	2.0	2.0	2.0	3.0	3.0	3.0	2.0	3.0	3.0	3.0
Sulphur % Max	(7)	0.7	0.7	0.7	0.7	0.7	0.7	0.7	0.7	0.7	0.7	0.7	0.7	0.7
Phosphorus % Max	(8)	0.25	0.25	0.15	0.9	0.9	0.9	0.3	0.3	0.3	0.04	0.10	0.16	0.16
Shatter Index	Over 50 mm	(9)	-	-	90	85	80	75	-	-	-	-	-	-
	Over 12.5 mm	(10)	-	-	96	95	94	92	-	-	-	-	-	-
Micum Index	+40 mm	(11)	78	76	-	-	-	-	-	-	-	-	-	-
	-10 mm	(12)	10	12	-	-	-	-	-	-	-	-	-	-
Porosity %	(13)	38 to 45	38 to 45	35 to 45	35 to 45	35 to 45	35 to 45	40 min	40 min	40 min	-	-	-	-
Temp (°C)	Initial Deformation	(14)	-	-	-	-	-	-	>1240	>1240	>1240	-	-	-
	Fusion	(15)	-	-	-	-	-	-	>1350	>1350	>1350	-	-	-
Reactivity to CO ₂	(16)	-	-	-	-	-	-	-	-	-	180	150	120	120
Size Range	(17)	The material shall be in the size range between 100 and 25 mm with a size tolerance of 5 % by mass for oversize and 10 % by mass for undersize		Size of the coke shall be as agreed to between the purchaser and the supplier (see also IS 437:1979)				Coke for producer and water gas manufacturer shall be of the size range between 50 and 6.3 mm with size tolerance of 5 % by mass on oversize and 10% by mass on undersize			The material shall be in 2 size ranges namely between 50 and 20 mm; and between 20 and 6.3 mm			

Table 2 – SIZE ANALYSIS OF HARD COKE FOR MARKETING

S.No.	Standard Nomenclature	Nominal Size Range (IS Sieve)	Ex-plant tolerance % by Mass, Max		Remarks
			On Oversize	On Undersize	
(1)	(2)	(3)	(4)	(5)	(6)
i)	Coke, extra large	+100	-	10	Foundry Coke
ii)	Coke, large	-100 to +25	5	10	BF Coke
iii)	Coke, medium	-40 to +25	5	10	Nut Coke
iv)	Coke, small	-25 to +10	5	10	Pearl Coke
v)	Coke, fine	-10	5	-	Breeze

Coke breeze is a different product usually of less than 10mm size, which arises in the course of overall manufacturing process in which metallurgical coke is used as raw material. During the coke quenching, handling and screening operation, coke breeze is produced.

Metallurgical coke and coke breeze are commercially understood as two different products. They have different properties and uses. Metallurgical coke is filtered to produce coke breeze during the process of charging of

metallurgical coke to the blast furnace. These small particles cannot be charged to the blast furnace as they clog the blast furnace and adversely affect the manufacturing process and the quality of product. Therefore, these fine particles are segregated/ screened on the conveyor system before charging metallurgical coke to the blast furnace.

With reference to the above IS 439:1979 standards, metallurgical coke shall conform to the specifications for Blast Furnace Coke or Foundry Coke as mentioned in the Table 1 & Table 2. Blast Furnace Coke shall be in the size range between 100 and 25 mm. Foundry Coke shall be in the size range of +100 mm. The sample U/R is having less than 10 mm size.

Based on the above technical literature the sample U/R was not meeting the requirements for metallurgical coke. Hence, it was not considered as Metallurgical Coke.

4. Department also agreed with the classification of coke breeze under CTH 270400 but noted that this will fall under 'other' category which consists of several items including Metallurgical coke, Coke for Ferro Alloy industry, Nut coke, etc. Therefore, relying on the description of the goods given in the said notification, department felt that as the exemption was available to metallurgical coke, whereas, the imported goods were 'Chinese Coke Breeze', the said exemption was not available. Accordingly, a SCN dt.30.12.2014 was issued denying them the benefit of the said exemption notification and demanding differential Customs Duty, as also, confiscation of goods, both available as well as the goods which were cleared already and also for imposition of penalty under section 112(a). On adjudication, while the demand has been confirmed in full, the confiscation proposed in respect of goods already cleared was not confirmed and it was restricted only to the goods available and also an option was given for redeeming the same on payment of redemption fine and a penalty of Rs.1 Crore was also imposed under section 112(a).

5. Learned Advocate for the appellant submits that the impugned order is suffering from a fundamental fallacy, viz., the presumption that it is only the blast furnace coke that qualifies as metallurgical coke. Also, that the adjudicating authority accepting the chemical examiner's view that sintering, where coke breeze is undisputedly used is not a metallurgical operation used for making iron and steel and thereafter, holding that only such coke, which

is capable of being used in the Blast Furnace (BF) alone would qualify as Metallurgical coke. His submission is that had it been the intention of the Government to exempt only blast furnace coke or for that matter, foundry coke, then the exemption notification would have categorically stated so instead of mentioning a general description of metallurgical coke and from the plain reading, the intention of the Government is to exempt all coke, which is used in metallurgical operations. Therefore, the exemption is based on end use of coke to which it is put. He has relied on various supporting documents including report of National Institute of Secondary Steel Technology (NISST), a body set up by the Ministry of Steel, wherein, they have, inter alia, clarified, based on plant visit to appellant's plant, that coke breeze was nothing but metallurgical coke based on its end use and application. Further, according to the appellant, as per US International Trade Commission Report of 1994 (Publication 2745), wherein, it has been observed that, 'Metallurgical Coke is composed of several subsets, including, as primary subsets, blast furnace coke and foundry coke. Industrial coke and breeze, which are two other subsets are classifications covering the undersized residual from the production of blast furnace and foundry coke.'

6. Learned Advocate also submits that the presumption of the chemical examiner that sintering is not a metallurgical process is not correct as he is not a metallurgical expert and he is only supposed to test the composition of the material tested and since in this case, exemption is not based on any chemical composition or parameter rather based on the end use, hence, opinion of chemical examiner has no relevance at the threshold. In fact, according to him, sintering is an essential process to agglomerate iron ore fines for processing in the blast furnace, without which the metal cannot be extracted from the ore. He has also relied on the NISST Report which acknowledged that Coke Breeze is used to provide heat and also acts as a reducing agent in the sintering process and therefore, metallurgical in nature.

7. As per World Book Encyclopedia (Page No. 375-376 of Volume 13), the expression 'metallurgy' has been defined as – *'Metallurgy is the science of separating metals from their ores and preparing them for use. All metal objects we use are made possible by the work of metallurgy. Metallurgy falls in two major divisions: Extractive or processed metallurgy; and physical or*

alloy metallurgy.' Further, extractive metallurgy has been defined as – *'Extractive Metallurgy deals with taking metals from their ores and refining them to a pure state. It includes a wide variety of specialized commercial processes, such as mineral dressing, roasting, sintering, leaching, electrolysis and amalgamation.'* Similarly, Extractive metallurgy has been defined in Kirk Othmer Encyclopedia of Chemical Technology (Volume 16 fifth edition), wherein, it has been stated that sintering is one of many operations which fall within the scope of such Extractive Metallurgy.

Usually, the ore or concentrate cannot be reduced to the metal in single operation. An additional preparation process is needed to modify the physical or chemical properties of the raw material prior to its reduction. Furthermore, most pyro metallurgical reductions do not yield a pure metal and an additional step, refining, is needed to achieve the chemical purity that is specified for the commercial use of the metal.

The preparation, reduction and refining operations are very much interdependent, and for a given metal must be considered as parts of a single flow sheet. To illustrate the principles of extractive metallurgy, however, it is convenient to discuss the various operations separately. 4.1. Preparatory processes. Several pyro metallurgical operations are used to change the chemical and physical properties of the ore or concentrate in order to make it more suitable for the main extraction process. The chemistry of these preparatory processes, which involve mainly gas-solid reactions, is relatively simple.

...Sintering and Pelletizing. The beneficiation of ores by physical techniques requires the liberation of metal bearing minerals. This is usually achieved by reducing the raw material to a very fine size. The high throughput reduction processes, such as the iron blast furnace, however, cannot handle a finely divided feed. Sintering and pelletizing, are techniques for agglomerating finely divided particles into a coarse material suitable for charging a blast furnace.

8. Apart from the aforesaid argument, learned Advocate also submits that in this case, the Bills of Entry were finally assessed and therefore, the demand, by way of another SCN, is not permissible without having bills of entry set aside in the appellate proceedings, keeping in view the judgment in the case of ITC Ltd Vs CCE, Kolkata-IV [2019 (368) ELT 216 (SC)] and Collector of Central Excise, Kanpur Vs Flock (India) Pvt Ltd [2000 (120) ELT 285 (SC)]. Insofar as the reliance placed by the department that appellant themselves had in their letter dt.09.01.2014 admitted that coke breeze was not the same as blast furnace coke, he pointed out that it was averred in the context of the value of coke breeze declared in the bill of entry being low as compared to blast furnace coke. According to the learned Advocate, it is not disputed that coke breeze and blast furnace coke are perceived differently, however, both are species of the same genus of metallurgical coke. As

regards reliance placed by the adjudicating authority on various technical reports and literature to arrive at the conclusion that coke breeze cannot be metallurgical coke, nowhere it was cited that coke breeze is not used in metallurgical operation. Thus, as per plain wordings of the exemption notification, any coke where the end use is metallurgical i.e., used in extraction of metal from ore, irrespective of chemical composition or other physical property i.e., size, would be covered by the notification. Insofar as reliance placed on Circular No.56/2003 dt.27.06.2003, learned Advocate pointed out that the department had failed to appreciate the context in which this circular was issued as the circular envisages a situation where coke breeze was not imported but it is generated in the course where metallurgical coke is used in the manufacture of pig iron/steel and in that context it was clarified that such generated coke breeze was different from imported coke and hence it cannot be said that imported coke is not fully utilized in the manufacturing process.

9. Further, he relies on the judgment of Hon'ble Supreme Court in the case of CCE, Bolpur Vs Ratan Melting & Wire Industries [2008 (231) ELT 22 (SC)] in support that any circular contrary to the law (whether primary or subordinate legislation) has no existence and is *non-est*. He has also relied on the judgment in the case of State of Punjab Vs Amritsar Beverages Ltd [2006 (7) SCC 607], wherein, the Hon'ble Supreme Court, inter alia, held that Court have and are required to resort to creative interpretation to balance age old and rigid laws, on one hand, and advanced technology, on the other. The same view was also echoed in the case of CC & CE Vs Lekhraj Jessumal & Sons [1996 (82) ELT 162 (SC)]. According to the learned Advocate, the reliance placed on some of the judgments by the department was for the period when coke breeze fines were incapable of being used for metallurgical operations, particularly for sintering and steel making and coke was capable of being used only in a blast furnace/foundry. However, with the advancement in technology, coke breeze is capable of being used for metallurgical operations in various industries using various technologies. He has relied on the judgment of Hon'ble Supreme Court in the case of National Mineral Development Corporation Vs State of MP [AIR 2004 SC 2456]. He also pointed out that on appeal to Hon'ble Supreme Court against the order passed by the Kolkata Bench of the Tribunal in their own case in similar issue, they got full relief on the grounds of limitation itself but as far as

eligibility of exemption notification was concerned, it was against them. However, on appeal by them, the Hon'ble Supreme Court disposed of their civil appeal by way of following order dt.18.10.2024:

" We dispose of this appeal by bearing in mind the fact that the appellant has succeeded on the ground of limitation. Since we are not inclined to interfere in the matter on that score, all contentions which would arise to the appellant could be raised in any other appropriate case.

Since we are keeping all contentions open to be raised by the appellant herein, it is needless to observe that the findings arrived at in the impugned order would not come in the way of considering the contentions which would be raised by the appellant in an appropriate case.

Pending application(s), if any, shall stand disposed of."

10. Therefore, in view of the said order, the decision of the Tribunal to the extent it is adverse to them on account of eligibility for the notification in respect of breeze, will not come in the way of decision by any other Court or Tribunal, where their contention is required to be heard without relying on the said observations/judgment of the Tribunal.

11. On the other hand, learned AR on behalf of the Department, inter alia, argued that the wordings used in the exemption notification are quite clear and it covers only metallurgical coke and not coke breeze. He has reiterated the findings of the Commissioner and the order of the Coordinate Bench at Kolkata in the appellant's own case i.e., M/s Jindal Steel & Power Ltd Vs CC (Prev.), Bhubaneswar [2024 (1) TMI 1335 – CESTAT Kolkata], as also the judgment of Coordinate Bench at Bangalore in the case of M/s Mukand Ltd, M/s Kalyani Steels Ltd, M/s Kirloskar Ferrous Industries Ltd, M/s SLR Metaliks Ltd Vs CC, Mangalore [2025 (3) TMI 73 – CESTAT Bangalore]. Further, in support that notification has to be construed strictly, he has relied on the judgment of Hon'ble Supreme Court in the case of CC (Import), Mumbai Vs M/s Dilip Kumar and Co. & Ors [2018 (7) TMI 1826 – SC] and in the case of CCCE & ST, Patna Vs M/s Shapoorji Pallonji and Co Pvt Ltd & Ors [2023 (10) TMI 748 – SC]. He has also invited the attention to the cross objections dt.24.10.2016 filed by the department.

12. This appeal was heard on 09.06.2025 when both sides made detailed arguments. Subsequently, it was felt that certain factual details were not

clear and hence, the matter was relisted for clarification purpose on 29.10.2025. In the course of hearing on being asked to explain the end use, learned Advocate mainly clarified the actual use of imported material and took us through the entire process highlighting the use of coke breeze in their sintering plant along with iron ore fine for making sinters and subsequently using the same sinter in the same plant in the BF for making iron and subsequent manufacture of steel. He categorically submitted that there is no dispute that it is not a 'coke' and only dispute is whether it can be called metallurgical coke when it is not being fed directly in BF but being used in the sintering plant first for making sinter. He also recapped and highlighted the arguments already made by him on 09.06.2025 in this regard.

13. Further, learned AR on being asked about maintainability of cross application filed by the department, agreed that the entire impugned order is against the appellant except for a small portion where adjudicating authority has not upheld the confiscation and Redemption Fine but department has not come in appeal against said point of impugned order. Hence, the department is not aggrieved as such with the order. Learned AR also pointed out some of the salient points of arguments made by him on 09.06.2025 specifically relating to chemical examiner's report, various standards for metallurgical coke and principle of strict construction of notification.

14. Therefore, keeping in view the submissions made by both the sides on 09.06.2025 and further clarifications given on 29.10.2025, we now proceed to decide the issue.

15. Before we take up this issue for detailed deliberation, we find that we have to address two preliminary issues, as under:

- a) Filing of Cross by the department against the appeal C/30106/2016 in terms of section 129A(4) of the Customs Act, 1962.
- b) Relevance and precedence value of the judgment of Kolkata Bench of the Tribunal in the appellant's own case (supra).

16. Insofar as the issue at (a) above, we find that as per section 129A, any person aggrieved by any order may appeal to Appellate Tribunal against such order.

Section 129A(4) is reproduced below for ease of reference:

“(4) On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within forty-five days of the receipt of the notice, a memorandum of cross-objections verified in such manner as may be specified by rules made in this behalf against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3).”

17. Therefore, unless the department is aggrieved with the order either in full or any part thereof, there is no ground for them to file an appeal or for that matter, memorandum of cross objections in terms of section 129A(4). In this case, from the Form CA-4 itself, it is apparent that relief claimed by the department is to uphold the impugned order dt.20.11.2015 passed by the Principal Commissioner of Customs. Therefore, it is obvious that they are not aggrieved by the order including even a part dropping of demand on account of not confiscating certain goods. Therefore, keeping in view the provisions under section 129A(1) and 129A(4) of the Customs Act, in this case, the department could not have filed cross application, as such, however, the grounds in the said cross may be considered as counter arguments to the grounds taken by the appellant in this appeal in accordance with Rule 15 of CESTAT Procedure Rules. Accordingly, the grounds taken to the extent consistent with the grounds considered in the SCN and OIO may be considered by this Tribunal. Thus, we hold that cross application is infructuous and not maintainable, as such.

18. Insofar as issue at (b) above, we find that in the light of the order of the Hon'ble Supreme Court dt.18.10.2024, this Bench is required to examine the contentions of the appellant irrespective of the decision on this issue by the Kolkata Bench. Therefore, we are inclined to hear the matter on merit, keeping in view various contentions and submissions made by the learned Advocate.

19. We have perused the OIO and we find that the adjudicating authority has primarily taken into account clarification given by the importer, chemical

examiner's report, technical literature and domestic and international parlance to conclude that metallurgical coke and coke breeze are two distinct and different products having their own properties and uses. For the ease of reference, para 32 of the OIO, is reproduced below: -

"32. Having considered the foregoing discussions with reference to the Importer's own clarification given at the time of assessment, chemical examiner's report, and technical literature & domestic and International parlance, it is concluded that the metallurgical coke and coke breeze are two distinct and different products having their own properties and uses. Metallurgical coke can't be replaced by coke breeze as its technical parameters cannot be considered on par with the metallurgical coke. Coke breeze is a by-product of coke manufacture and it is a residue relatively in small particles arises during the manufacturing process of coke and not in a blast furnace. Further, metallurgical coke/Lam coke was being imported at higher unit price through this port during the period of subject import. The goods were being declared as metallurgical coke and exemption of notification benefit of 012/2012-Cus Ser No. 125 was being claimed and granted. This clearly proves that metallurgical coke is a product being imported by other importers and the benefit of exemption notification was being granted under the said notification as the declared description exactly matches with that of the description in the Notification. When the government grants exemption for a particular commodity the exemption is applicable only to that commodity and not to any other goods/commodity. Thus, it is clear that the exemption as provided against the Sl.No.125 of Notification No.012/2012-Cus is available only to metallurgical coke and not coke breeze.

32.2 In view of the above, I hold that the claim of exemption for coke breeze under Sl.No.125 of CN 12/2012 Dt.17.03.2012 for the two clearances obtained against Bills of Entry No. 4147311/21.12.2013 and 4500504/ 30.01.2014 by M/s JSPL was not in order and I also hold that the benefit of exemption under said notification is to be denied and the differential duty to be recovered."

20. To sum up, the adjudicating authority has taken into account the express wordings used in the notification and some of the clarifications furnished by the appellant in the course of enquiry. Further, he has taken into consideration the chemical examiner's report, clarifications as well as cross-examination of the chemical examiner to conclude that the metallurgical coke is different than the breeze. The clarifications given by the chemical examiner is cited below for ease of reference.

"Coke is the residual solid product obtained upon carbonization of coking coal. The coke making process starts with bituminous pulverized coal charge which is fed into the coke oven through ports in the top of the oven. After charging, the oven ports are sealed and the coal is heated at high temperatures (1600 to 2300F) in the absence of oxygen. Coke manufacturing is done in a batch mode where each cycle lasts for 14 to 36 hours. A coke oven battery comprises a series of 10 to 100 individual ovens, side by side, with a heating flue between each oven pair. Volatile compounds are driven from the coal, collected from each oven, and

processed for recovery of combustible gases and other coal by-products. The solid carbon remaining in the oven is the coke. The necessary heat for distillation is supplied by external combustion of fuels (e.g., recovered coke oven gas, blast furnace gas) through flues located between ovens. At the end of the heating cycle, the coke is pushed from the oven into a rail quench car. The quench car takes it to the quench tower, where the hot coke is cooled with a water spray. The coke is then screened and sent to the blast furnace or to storage.

In the by-products recovery process, volatile components of the coke oven gas are recovered including the coke oven gas itself (which is used as a fuel for the coke oven), naphthalene, ammonium compounds, crude light oils, sulfur compounds and coke breeze (coke fines). During the coke quenching, handling and screening operations, coke breeze is produced. Typically, the coke breeze is reused as a fuel in other manufacturing processes on-site (e.g., sintering) or solid off-site as a by-product.

Metallurgical coke and coke breeze are commercially understood as two different products. They have different properties and uses. Metallurgical coke is filtered to produce coke breeze during the process of charging of metallurgical coke to the blast furnace. These small particles cannot be charged into the blast furnace as they clog the blast furnace and adversely affect the manufacturing process and the quality of product. Therefore, these fine particles are segregated/ screened on the conveyor system before charging metallurgical coke to the blast furnace.

Coke breeze is a different product usually of less than 10 mm size, which arises in the course of overall manufacturing process in which metallurgical coke is used as raw material. During the coke quenching, handling and screening operation, coke breeze is produced."

21. He has also relied on the data given by the Ministry of Steel, Government of India, on their website, where the term 'metallurgical coke' has been defined as – 'not all coke can be used in metallurgical operations for which good quality coke made from specific blend of coking coal is essential. Such coke is classified as Met. Coke and that coke breeze is of size 0-15mm.'

22. He has placed reliance on Bureau of India Standards – IS 3810 (Part 2): 2003, wherein, the terms relating to sampling testing and analysis are given and coke breeze and metallurgical coke are described as below:

Breeze: *The undersize after separating the smallest size of graded coke and it is usually less than 10mm in size.*

Coke: *The solid, agglomerated carbonaceous residue produced by the pyrolysis of coal in the absence of air.*

23. He has also relied on the nomenclature used in the International Union of Pure and Applied Chemistry (IUPAC) for coke breeze and metallurgical coke, where they have been described as follows:

Coke breeze is a by-product of coke manufactured and coke breeze is the residue from the screening of heat-treated coke. The particle size is less than 10mm. Generally coke breeze has a volatile matter content of < 3wt%.

Metallurgical coke is produced by carbonization of coals or coal blends at temperatures up to 1400K to produce a macro porous carbon material of high strength and relatively large lump size. Metallurgical coke must have a high strength to support heavy loads in the blast furnace without disintegration. Metallurgical coke is also used as filler coke for poly granular carbon products.

24. He has also relied on the document published by Office of Enforcement and Compliance Assurance, US Environmental Protection Agency about manufacturing, wherein, the terms coke breeze and metallurgical coke are explained as under: -

***Coke breeze** is obtained by by-products recovery process, volatile components of the coke oven gas stream are recovered including the coke over gas itself (which is used as a fuel for the coke oven), naphthalene, ammonium compounds, crude light oils, sulfur compounds, and coke breeze (coke fines).*

During the coke quenching, handling and screening operation, coke breeze is produced.

Typically, the coke breeze is reused in other manufacturing processes on-site (e.g. sintering) or sold-off as a by-product.

25. He has also relied on the data of International Atomic Energy Agency, where the descriptions are as under: -

***Coke breeze** is a by-product of coke manufacture. It is the residue from screening coke and comprises particle sizes less than 10 mm. Note that the coke which is screened may be made from bituminous and sub-bituminous coals including brown coals.*

***Metallurgical coke** (coke over coke)*

The solid product obtained from carbonization of coal at high temperature. Coke over coke is low in moisture and volatile matter and has the mechanical strength to support the blast furnace charge. It is used mainly in the iron and steel industry acting as heat source and chemical agent.

26. Therefore, having relied on various technical parameters, reports, etc., he found that the product imported by the appellant would not be covered within the expression 'metallurgical coke' and therefore, not entitled for exemption.

27. Further, we note that department has relied heavily on Test Reports and opinion to conclude that coke breeze is not metallurgical coke. We have perused his report and find that he has given specific findings with regard to moisture content and Volatile Matter (VM) and given his opinion based on

ISI standards for metallurgical coke, both in terms of chemical and physical parameters, and size analysis for marketing. It is obvious that this standard covers various types of industrial coke including Blast Furnace coke, Foundry coke, coke for ferroalloy industry, etc., and these characteristics vary widely. Even for marketing purpose, the hard coke has been classified on the yardstick of size, where 'coke fine' of '-10' size is termed as coke breeze. The conclusion of chemical examiner is not based on correct application of these standards. He has mainly distinguished that coke breeze does not meet the standards of blast furnace coke or foundry coke and in equating 'metallurgical coke' with only BF coke. In fact, these standards would indicate that there could be various types of industrial coke suitable for various end use and purpose and the same can be marketed under different nomenclature depending on size. Thus, we find that his conclusion that breeze is not metallurgical coke is based on presumption that only BF coke could be considered as metallurgical coke and that since both are perceived commercially as two different products, it would not be covered within the category of metallurgical coke.

28. At this juncture, it is important to understand what coke is and thereafter, what is metallurgical coke. Essentially, coal is a naturally occurring fossil fuel utilized primarily for its thermal energy content, whereas, coke is made from coal, essentially low ash low Sulphur bituminous coal, through specialized process and primarily used for its reduction properties, fuel and structural material for making steel in a blast furnace. Generally, coke will have very low or no volatile matter (VM) and high fixed carbon (FC). It will also not have Sulphur and phosphorus or only negligible amount, as presence of these elements could adversely affect steel quality. Broadly, two types of industrial coke exist viz., coal coke made out of bituminous coal, which is used as reducing agent and also as fuel in Iron ore smelting, eg., Iron making from iron ore. The other type is petroleum coke, which is made from crude petroleum, also known as pet coke, which is not relevant for present appeal.

29. We have also gone through various technical literatures and submissions by both sides and we find that there are certain facts, which are not being disputed by either side. It is not being disputed that the said breeze is not being fed directly in the blast furnace. It is also not disputed

that breeze has been used in the sintering plant for manufacture of sinter. It is also not disputed that the said sinter has been further used in the blast furnace of the appellant for making iron/steel. We find that reliance placed on chemical examiner's report and his conclusion that breeze cannot be considered as metallurgical coke suffers from certain inherent fallacies. Firstly, we find that there is no definition, as such, of 'metallurgical coke' either in the tariff or in the notification itself and therefore, in order to understand what metallurgical coke is, reliance has to be placed on various technical literatures, specifications, nomenclatures, end use, etc. A great deal of reliance has been placed by the chemical examiner on IS 437-1979 and IS 439-1989. We find that as far IS 439-1989 is concerned, this prescribes standard for sampling and testing for industrial coke, suitable for use in blast furnace, foundries, gas producers and ferroalloy industries. Whereas, IS 437-1979 is primarily for size analysis of coal and coke, where coke of size +100 is referred to as foundry coke and size between 25-100 is referred as blast furnace coke and size up to 10 is treated as breeze. Further, we note that though not referred to in the OIO, however, by way of counter, department also pointed out that in terms of IS 5451-2001, wherein, terminology has been provided in respect of glossary and terms relating to coal, carbonization products and metallurgical coke, wherein, it has been explained as – 'This typically contains 85-88% fused carbon, 9-11% ash and 2% volatiles.' It defines coal breeze (not coke breeze) as – 'The finer sizes of coke below 6mm obtained by screening.' It also defines coke under three categories viz., 'Run-of-Chamber, Run-of-Oven and Run-of-Retort before undergoing any screening or other preparation'.

30. We also find that definition of coke/metallurgical coke on the website of Ministry of Steel, Government of India, defines certain terms and definitions commonly used in Iron and Steel industry. This glossary also explains two types of agglomerated products viz., sinter and pellet. In this appeal, it is being used in the sintering plant for the purpose of making sinter, which has been defined as follows:–

Sinter is a clinker like aggregate which is normally produced from relatively coarser fine iron ore (normally -3mm) mixed with coke breeze (-3mm), limestone dolomite fines (-3mm) and other metallurgical return wastes from the plant.

Sinter is a much preferred input/raw material in blast furnaces. It improves BF operation and productivity and reduces coke consumption in blast furnace. Presently, more than 70% hot metal in the world (in India 50%) is produced through the sinter.

31. They have also defined what metallurgical coke is. According to this glossary, coke is residual solid product obtained upon carbonization of coking coal. Depending upon property, coke is known as Hard Coke, Soft Coke and Metallurgical Coke. The metallurgical coke is defined as under: -

Metallurgical Coke - *Not all coke can be used in metallurgical operations for which good quality coke made from specific blend of coking coal is essential. Such coke is classified as Met. Coke.*

32. The glossary also explained the term 'blast furnace coke', as under:

Blast Furnace (BF) Coke: *The term is used to refer to such Met Coke which is used for iron making in BF. BF coke fulfills 3 main functions in the blast furnace operation:*

It acts as a fuel providing heat for all reactions.

It acts as a reductant producing reducing gases and carbon for reduction of iron ore and

It provides the required permeability for movement of gases through the bed of iron ore, coke and limestone inside the blast furnace.

33. Thus, we find that coke, per se, has various industrial uses like steel productions and also in metallurgical process used for production of other metals like zinc, copper, etc. It is also used in foundries and also in chemical industries. Thus, a metallurgical coke is one which is used in a metallurgical process for production of iron and steel and other metals from metal ores. Some cokes are specifically suitable for particular purpose like Foundry or Ferroalloy industry but the fact remains that coke is essentially meant for metallurgical purpose. In the present appeal, there is no dispute that it is coke and not coal, however, the origin of this imported breeze coke is not known conclusively to either department or appellant but it could generally emerge either at the time of charging of metallurgical coke in BF or emerge as undersize coke in the process of coke making from coal in a coke oven battery. Thus, except for size, it has the same chemical properties as that of the coke from which it has emerged. In fact, because of its size, this cannot be fed directly in BF and therefore, with advent of modern metallurgy, a process called 'sintering' is now being widely utilized for using smaller size coke and smaller size iron ore fines for converting them in 'sinter', which is

then charged into BF along with regular size iron ore and metallurgical coke for making iron/steel.

34. We further find that the test conducted by CRCL chemical examiner is not in accordance with IS 5451-2001 as it merely defines technical terms relating to coal carbonization products. Therefore, the technical characteristics given in the absence of any test conducted in CRCL in respect of all parameters cannot be relied upon by the department. We also find much force in the submission of the appellant that the averment of chemical examiner that only BF coke can be considered as metallurgical coke is not based on correct appreciation of facts and various literature and reports in this regard. They have placed reliance on an investigation report by the US International Trade Commissioner on foundry coke from China. They have quoted the report as under: -

"Metallurgical coke is the carbonized product remaining after the destructive distillation of certain types of coal is heated in an oven for many days or hours. Section 332 Report at 1-2. They types of metallurgical coke other than foundry coke are blast furnace coke (or furnace coke) and other industrial coke, including coke breeze."

35. The report further states that coke breeze does not have unique chemical characteristics that distinguish it from other types of coke, but the main physical distinction is size. Relevant portions of the report are extracted below for ready reference: -

"Industrial coke consists of those products remaining after the screening of foundry coke and blast furnace coke. It includes products that are undersized or otherwise rejected for foundry or blast furnace use because of carbon or ash content. Since industrial coke is mainly a byproduct of foundry or blast furnace coke, it does not have unique chemical characteristics that distinguish it from other types of coke. The main physical distinction is size. Industrial coke has different end uses from foundry coke (and from blast furnace coke). It is not used in foundries, and instead is used in the production of other products including rock wool, beet sugar, calcium carbide, and smelting iron."

36. We have also gone through the report of NISST, wherein, they have specifically visited the appellant's plant and, inter alia, noted the use of coke which is made from coking coal or bituminous coal in the coke oven batteries. The coke made in the coke oven is further crushed, screened and categorized based on size for usage in different metallurgical processes in the plant. Coke size between 25-80mm is used in blast furnace. Coke size between 10-25mm called as nut coke is used in SAF and BF. Coke size

<10mm called as coke breeze is used in sinter plant and EAF. Further, iron ore, coke, sinter, pellets, limestone and quartz are fed from the top into a blast furnace, and hot air from stoves is fed through tuyers from the bottom of the blast furnace along with PCI and steam to reduce iron ore to molten iron. On going through the manufacturing process of coke in coke oven plant, it is noticed that once the coke is made from the coal, it is pushed out of battery and is screened so as to ensure that only coke of particular size is fed directly into the blast furnace, whereas, the coke up to 10mm size, which is screened out is used in the sinter plant for making sinter first, which is subsequently used as charge in BF.

37. We have also examined the process of sintering in Iron and Steel making. A sinter plant is used for making 'sinter' and the raw materials used for making sinter are Iron ore fines of 0-10mm, limestone of 0-03mm, dolomite of 0-03mm, coke fines of 0-03mm and sand/quartz of 0-03mm. In addition to that sometimes returned sinter and mill scale along with some plant waste are also used in sintering process. The coke breeze is used both as a fuel and partial reducing agent in the sinter making process and the reaction taking place during the process in reduction of iron ore fines is as under:



38. Since partial reduction of iron ore is taking place in the process of sintering, these reactions are metallurgical in nature. These reactions also take place in blast furnace where sinter is used as one of the feeds for extraction of Iron from Iron ore. Hence based on this, coke used in the process of sintering can also be said to have the properties of metallurgical coke. We have also perused the preliminary findings of Ministry of Commerce and Industries, Department of Commerce (Directorate General of Anti-Dumping & Allied Duties) dt.14.10.2003 in relation to anti-dumping investigation concerning imports of metallurgical coke originating in or imported from Japan, wherein, it has been, inter alia, held that Met Coke is used by iron foundries, steel foundries, non-ferrous metal castings, lead and zinc smelters, secondary steel producers, chemical plants, ferroalloy plants and pig iron producers as reducing agent. We have also gone through the Circular No.56/2003 dt.27.06.2003, which was issued in the context of

dutiability of coke breeze generated in the process of manufacturing of pig iron/steel. After observing that in the process of charging metallurgical coke to the blast furnace, some amount of fine/small size particles (0-12mm), commonly known as coke breeze, are generated, which cannot be charged to blast furnace directly and held that metallurgical coke and coke breeze are commercially understood as two different products. They have different properties (especially calorific value) and uses. Hence, when metallurgical coke is filtered to produce coke breeze during the process of charging of metallurgical coke to the blast furnace, a different product is produced which is chargeable to excise duty under Heading 2704 00. We find that while this circular says that these are commercially known as two different products, it is not stating that the breeze cannot be considered as metallurgical coke, as far as metallurgical properties are concerned or end use is concerned. It is only referring to the fact that breeze is generated in the course of feeding of metallurgical coke. It is not stating that breeze has undergone any physical or chemical change.

39. Therefore, the issue that one has to understand in this appeal is whether breeze is a metallurgical coke or not. There is no dispute that this is a coke as it is not being disputed by either side that it is not coke but coal or something else. Therefore, it is presumed that it has emerged either in the process of manufacturing of coke in the coke oven batteries abroad or it is from the screening of coke at the time of charging in the blast furnace. Nobody is disputing that its size, as such, cannot be directly fed into blast furnace. However, the said breeze, merely because its size being less than 10mm, cannot be said as one which has got no metallurgical property or use in the metallurgy industry. It is evident from the report of NISST that in the sintering plant, the emerged breeze is not only being used as fuel but also as reducing agent for partially reducing the iron ore fines of the size, which cannot directly be fed into the blast furnace. It is also not disputed that the emerging sinter made out of this breeze and iron ore fines and other raw materials like dolomite, etc., are further used in blast furnace for making iron/ steel. If the breeze has got no metallurgical property, then the same cannot be used either directly or indirectly in the blast furnace. It is obvious that it is not being used in the blast furnace merely because of its size, therefore, to make it usable along with other undersized raw materials, in

the modern metallurgy, they are first used for making sinter, which is further fed into blast furnace for making steel.

40. We note that the process of sintering is basically a manufacturing process that involves heating or compressing particles to form a solid bond. In the process of sintering, these types of fine coke are used as fuel as well as reducing agent. It can even act as carbon source influencing chemical composition of sintered material. As reducing agent, these fine cokes react with oxygen, resulting in formation of pure metal. In the modern metallurgy, coke used in the blast furnace is for fuel, as reducing agent and also for support, whereas, the coke breeze, which is also emerging out of same metallurgical coke in the coke oven or in the blast furnace while feeding blast furnace coke, has all these properties, except for the size, which hinders its direct feed into blast furnace.

41. We find that essentially metallurgy refers to science and technology of extracting, processing and application of metals and their alloys and it involves various aspects including extraction, processing, alloying, heat treatment etc., and is used in, inter alia, iron and steel production, aerospace, automotive mechanical devices. Thus, when the coke having metallurgical properties but of size less than 10mm, it is used for metallurgical purpose, like iron and steel making through sintering process, which is now accepted as better process to use all the waste and other undersized iron ore fines, dolomites, etc., and also cost effective and environment friendly. The use of sinter includes improved reducibility, increased productivity, coke saving, etc. Therefore, we find that sintering is a metallurgical process as it involves transforming fine iron ore particles using coke breeze into solid porous material with improved physical and chemical properties. It also involves heating the iron ore particles in high temperature oven with fuel source to achieve desired material properties. It also involves chemical reactions such as reduction of iron oxides and formation of gases, which affects final composition and properties and therefore, in the iron production, sinter is critical intermediate product serving as feed stock for blast furnace. Thus, we find that conclusion drawn by the adjudicating authority based on chemical examiner's report, as well as selective reference to various technical literature, is not correct.

42. A plain reading of the entry at S.No.125 of the notification would essentially mean that any coke which can be used for metallurgical purposes is covered within the ambit of the said notification. The breeze is coke is not in dispute. It is used in the metallurgical process through sintering route, which in turn is used for steel making is also not in dispute. Sintering process is a metallurgical process, where breeze is both used for fuel and also as reducing agent. The said sinter is further used as charge in blast furnace as feed for making iron/steel. Therefore, a holistic evaluation of the process of sintering and its use would indicate that breeze has indeed been used for the metallurgical purpose in the given factual matrix. Therefore, in the absence of any specific or definitive definition of metallurgical coke, either in the notification or in the tariff, a plain reading would have to be resorted to. A plain reading, as discussed in the foregoing paras, would indicate that breeze is a coke and has been used for metallurgical purposes. We find that the reliance placed by the adjudicating authority on circular and the price being less as compared to metallurgical coke or the statements are not relevant in as much as the circular is in the context of different issue altogether and prices would definitely be less for breeze due to its size as compared to prime metallurgical coke, which can directly be fed into blast furnace, but it does not take away the fact that it is not metallurgical coke, as such. A fine sized (below 10 mm) metallurgical coke known as breeze cannot fetch the same price as blast furnace type metallurgical coke or foundry type metallurgical coke. Therefore, price varies for different types of coke having metallurgical use and use by different industry for different purposes and end use.

43. We also note that notification has classified metallurgical coke under CTH 2704 00, which covers various types of coke and semi-coke including hard coke, soft coke, etc. Admittedly at 8 digit level, blast furnace coke or so called metallurgical coke and breeze are under the same heading under 'other' category. If the notification refers to only 6 digit classification and not 8 digit, we find that it essentially means all coke or semi-coke are of metallurgical nature, unless otherwise proved by its end use. The reliance placed by the appellant on Tribunal's judgment in the case of Chief Engineer, Ranjit Sagar Dam Vs CCE, Jalandhar [2006 (198) ELT 503 (Tri-LB)] is relevant in this regard.

44. There is no dispute that blast furnace coke, coke oven coke and coke breeze are understood differently but to come to the conclusion that only blast furnace coke or coke oven coke is metallurgical coke and others are not is not based on correct appreciation and holistic evaluation of various literatures, standards and references relied upon by both sides. Thus, to equate blast furnace coke only as metallurgical coke in the context of notification is not correct.

45. It is also important to note that Notification No.12/2012 was issued in substitution of earlier Notification No.21/2002, wherein, at S.No.71, "metallurgical coke when imported by a manufacturer of pig iron or steel using a blast furnace or COREX technology" was exempted in excess of 5% subject to certain conditions. However, in Notification No. 12/2012, at S.No.125, it exempts 'metallurgical coke', per se, without any qualification, specification, end use or conditions. Thus, it is obvious that entry 125 has enlarged the scope of the expression 'metallurgical coke' and not restricted as was assigned to metallurgical coke at S.No.71 of earlier Notification No. 21/2002. Therefore, equating only BF coke as metallurgical coke would not be correct interpretation.

46. Much reliance has been placed by the department on the judgments of M/s Dilip Kumar and Co. & Ors (supra) and M/s Shapoorji Pallonji and Co Pvt Ltd & Ors (supra). We find that while the notification has to be construed strictly and in case of any ambiguity, the interpretation that favors Revenue must be adopted, we do not find that the said ratio is applicable in the facts and circumstances of this case, as there is no ambiguity insofar as understanding the expression 'metallurgical coke' used in notification is concerned by simply applying a plain reading of the term used in the notification in the absence of any specific definition of the same given either in tariff or in the notification. Thus, for the reason cited above, we find that breeze is nothing but metallurgical coke, which has been used for metallurgical purposes through sintering route and thus, reliance on the judgment of M/s Dilip Kumar and Co. & Ors (supra) is not applicable in the facts of the case. This aspect has also been dealt with in the case cited by the Revenue themselves in M/s Shapoorji Pallonji and Co Pvt Ltd & Ors (supra), where at para 30 it is held as under:

“30. Ms. Bagchi heavily relied on the decision of a five-judge Bench of this Court in Dilip Kumar (supra) to urge that in case of any ambiguity in interpreting an exemption notification, the interpretation that favours the revenue must be adopted; also, the burden of proving applicability of the exemption notification would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification. At the outset, we record that there is absolutely no quarrel with the proposition laid down therein. We, however, reject the contention of Ms. Bagchi based on Dilip Kumar (supra) because the ratio is not applicable to the facts and circumstances of this case. This, for the simple reason, that there exists no ambiguity insofar as the interpretation of clause 2(s) is concerned. We are endorsed in our opinion by the Latin maxim quoties in verbis nulla est ambiguitas, ibi nulla expositio contra verba expressa fienda est, which means that when there is no ambiguity in the words, then no exposition contrary to the words is to be made. It is, therefore, clear as a sunny day that there arises only one plausible construction of clause 2(s) which is the one the Patna High Court adopted, and which we are inclined to uphold.”

47. Insofar as reliance placed by the department on the judgment in the case of M/s Mukand Ltd, M/s Kalyani Steels Ltd, M/s Kirloskar Ferrous Industries Ltd, M/s SLR Metaliks Ltd Vs CC, Mangalore (supra), we find that the Coordinate Bench at Bangalore has not examined the issue on merit in detail and has followed the ratio laid down by the Kolkata Bench in the case of M/s Jindal Steel & Power Ltd Vs CC (Prev.), Bhubaneswar (supra). As discussed earlier, we are not placing any reliance on the said judgment of the Kolkata Bench and therefore, this case law is also having no relevance or binding precedent in the present appeal.

48. To sum up from the findings and discussions in the foregoing paras, we find, inter alia, that

- a) Imported Chinese Coke Breeze is emerging out of coke either at the time of screening of coke made in coke oven from coking coal/bituminous coal or is emerging out of metallurgical coke feed at the time of charging in the blast furnace.
- b) Various IS specifications exist for various types of coal and coke based on chemical properties, physical properties and size but not any of these have specifically stated that only blast furnace coke is ‘metallurgical coke’ having peculiar chemical properties, as distinct from other types of coke.
- c) Sintering process in an integrated steel plant is used for producing ‘sinters’ from undersized charging materials like metallurgical coke,

iron ore, dolomite, etc., which cannot be charged directly into the blast furnace due to technical difficulty arising out of their size or weight and not because they do not have chemical properties which can be fed directly into blast furnace.

- d) Sinters are intermediate agglomerated raw materials used as charge in blast furnace for making iron/steel and hence, sintering is very much part of metallurgical process of extracting iron from iron ore.
- e) Chemical examiner has given his opinion not on any exhaustive test parameters or specification for metallurgical coke but on his understanding of the term 'metallurgical' based on certain standards referred to in the SCN and literature not specified by him and relying only on actual test performed taking only two parameters viz., Moisture and Volatile Matter. Thus, it cannot be a conclusive opinion to support the ground that sample i.e., coke breeze is not metallurgical coke.
- f) Adjudicating authority has mostly relied on chemical examiner's opinion and some literature to come to the conclusion that coke breeze is not metallurgical coke, because it is commercially known differently, which was even accepted by the appellant and not being disputed. However, the conclusion that only direct feed blast furnace coke is to be treated as metallurgical coke is not based on holistic evaluation of different standards and literature referred by both sides and ignores its inherent properties and end use in an integrated steel plant for metallurgical purposes.

49. Therefore, we find that the expression 'metallurgical coke' used in the Notification No. 12/2012 (S.No.125) has to be understood in the sense that as long as product is coke and is used for metallurgical purpose, the exemption would be available. As discussed supra, in this case, coke breeze has been used for metallurgical purpose only and not for any other purpose like non-metal extraction, etc. Thus, it would come under the expression of 'metallurgical coke'. Further, we have not examined the submission of appellant regarding non-maintainability of demand on the grounds that original classification or BE has not been challenged by the department,

relying on the judgment in the case of ITC Ltd (supra), as on merit itself, we have held them eligible for the exemption.

50. Therefore, we find that in the facts of the case and submissions made by both the sides, the 'Chinese Coke Breeze' imported by the appellant would be entitled to benefit of Notification No.12/2012-Cus dt.17.03.2012. Further, since on merit itself they are entitled for the benefit under notification, confiscation and penalty would also not sustain. Therefore, the impugned order is liable to be set aside to the extent appealed against and accordingly, is set aside. Cross application filed by the Respondent/ Department is disposed of as infructuous.

51. Appeal is allowed with consequential relief, if any, as per law

(Pronounced in the Open Court on 06.11.2025)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)