CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. III

Customs Appeal No. 41582 of 2016

(Arising out of Order-in-Original No. 46984/2016 dated 29.04.2016 passed by Commissioner of Customs, No. 60, Custom House, Rajaji Salai, Chennai – 600 001)

M/s. Sri Ragavendra Minerals **...Appellant**
No. 63/A9, Vasantham Towers,
Court Road, Nagarcoil,
Kanyakumari – 629 001.

Versus

Commissioner of Customs **...Respondent**
Chennai II Commissionerate,
No. 60, Custom House,
Rajaji Salai,
Chennai – 600 001.

APPEARANCE:

For the Appellant : Mr. Hari Radhakrishnan, Advocate
For the Respondent : Mr. Anoop Singh, Authorised Representative

CORAM:
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No. 40439 / 2026

DATE OF HEARING : 25.11.2025
DATE OF DECISION : 27.03.2026

Per Mr. VASA SESHAGIRI RAO

The present appeal is directed against Order-in-Original No. 46984/2016 dated 29.04.2016 passed by the Commissioner of Customs, Chennai (hereinafter referred to as 'impugned Order'), whereby the adjudicating authority held that the goods imported by the appellant during the period January 2011 to October 2012 were "Concentrates of

Titanium" and not "ores", denied the benefit of exemption from Additional Duty of Customs under Notification No. 4/2006-CE and Notification No. 12/2012-CE, confirmed differential duty of ₹1,32,91,695/- along with interest, ordered confiscation of the goods under Section 111(m) of the Customs Act, 1962 and imposed penalty equal to the duty under Section 114A of the Act.

1.2 M/s. Sri Ragavendra Minerals, Nagercoil (hereinafter referred to as 'the appellant') is engaged in the import and trading of mineral products such as rutile ore/rutile sand. During the relevant period, the appellant imported consignments from overseas suppliers including Northern Bio-Six SDN BHD, Malaysia; Gold Medal Consortium Pvt. Ltd., Sri Lanka; and Iluka Resources Ltd., Australia. The goods were declared in the Bills of Entry as Rutile Ore / Rutile Sand / Titanium Ore (Rutile 92) under Chapter Heading 2614 and exemption from CVD was claimed on the footing that the goods were "ores", which were exempt from Central Excise duty and consequently from Additional Duty of Customs. The imports were assessed and cleared by Customs on payment of Basic Customs Duty and other applicable levies, while extending the benefit of exemption from CVD.

1.3 Subsequently, investigations were initiated by the Directorate of Revenue Intelligence and a Show Cause Notice dated 21.12.2015 was issued alleging that the imported goods were not ores but "titanium concentrates", that the appellant had mis-declared the description of the goods to avail ineligible exemption, and that differential duty was recoverable by invoking the extended period of limitation.

1.4 The Commissioner of Customs, Chennai, *vide* Order-in-Original No. 46984/2016 dated 29.04.2016, confirmed the demand of differential duty of ₹1,32,91,695/- along with interest, held the goods liable for confiscation (without redemption fine as goods were not available) and imposed penalty equal to duty under Section 114A. Aggrieved by the said order, the appellant has filed the present appeal before the Tribunal.

2.1 The Ld. Advocate Mr. Hari Radhakrishnan, appearing for the appellant, submitted that the entire case of the Department rests on assumptions and generalised technical literature, without any consignment-specific evidence. It was contended that the goods imported were naturally occurring rutile sand separated from beach sand by normal physical processes such as gravity separation, which

are processes normal to the metallurgical industry. It was specifically argued that neither the appellant nor the overseas suppliers carried out any chemical process, roasting, leaching, acid treatment or any other special beneficiation that could convert an ore into a concentrate. According to learned counsel, mere physical or mechanical separation does not alter the essential character of the mineral and cannot, in law, transform an ore into a concentrate.

2.2 It was further submitted that each import consignment was accompanied by load-port documents including commercial invoices, certificates of origin and chemical analysis/test certificates issued at the port of export. These documents consistently described the goods as rutile ore, rutile sand or titanium ore (rutile 92). These documents were produced before Customs at the time of clearance and examined by the assessing officers. At no stage did the Department allege that these certificates were false, fabricated or unreliable.

2.3 Particular emphasis was placed on the fact that, in respect of one consignment imported under Bill of Entry No. 4953563 dated 18.10.2011, Customs authorities themselves drew samples and forwarded them to the

Chemical Examiner of the Custom House Laboratory with specific queries, including whether the goods were natural rutile ore and whether they could be treated as concentrates. Based on the Chemical Examiner's report, the goods were accepted as rutile ore and allowed clearance. It was contended that once Customs has tested and accepted the goods as ore, it is not open to the Department to subsequently re-characterise the same goods as concentrates without fresh or contrary technical evidence.

2.4 The appellant also relied on reports issued by Indian Rare Earths Ltd., Kollam, a Government of India undertaking and a recognised authority in the field of mineral sands. Subsequent imports of identical goods were tested by IREL and the test reports categorically stated that the major minerals present were rutile and leucoxene, which are ores of titanium in natural form. It was submitted that these expert reports directly support the appellant's case and demolish the allegation that the goods were concentrates.

2.5 The Ld. Counsel has referred to the HSN Explanatory Notes to Chapter 26 and submitted that the Notes clearly recognise that ores may undergo certain physical or mechanical processes such as crushing, grinding, screening, washing and gravity separation without losing

their character as ores. Concentrates, as per HSN, are ores from which foreign matter has been removed by special treatments. It was contended that no such special treatment has been established in the present case.

2.6 Further, the Ld. Advocate placed reliance on judicial precedents including *Indian Rare Earths Ltd. v. CCE, Bhubaneswar-I, 2002 (139) ELT 352 (Tri.-Kolkata)* (affirmed by the Supreme Court), *Classic Microtech Pvt. Ltd. v. Commissioner of Customs, 2012 (285) ELT 418 (Tri.-Ahmd.), Malu Electrodes Pvt. Ltd. v. Commissioner of Customs, 2018 (4) TMI 492 (CESTAT Mumbai),* and other decisions consistently holding that rutile/zircon sand subjected only to physical separation remains as a ore and so, eligible for exemption.

3.1 The Ld. Authorized Representative Mr. Anoop Singh for the Revenue, supported the impugned order. He submitted that rutile imported by the appellant has high titanium dioxide content, often exceeding 90%, which indicates that the goods are upgraded mineral concentrates. Reliance was placed on technical publications including USGS reports and supplier literature describing rutile as a titanium mineral concentrate.

3.2 It was argued that suppliers such as Iluka Resources undertake extensive beneficiation processes and that rutile marketed by such suppliers cannot be treated as raw ore. It was further submitted that exemption notifications must be strictly construed and that once the goods are found to be concentrates, the appellant is not entitled to exemption. Reliance was placed on the judgment of the Hon'ble Supreme Court in *Star Industries v. Commissioner of Customs (Import), Raigad, 2015 (324) ELT 656 (SC).*

4. We have heard the rival submissions of both sides. We have also perused the appeal records, chapter/HSN Notes of Chapter 26, Technical literature placed before us, Test report as well as the judicial precedents cited

5.1 Upon such consideration, the principal issue for determination is whether the goods imported by the appellant are "ores" or "concentrates" within the meaning of Chapter 26 of the Customs Tariff.

5.2 Consequentially, the issues of eligibility to exemption, invocation of extended period of limitation, confiscation and penalty will be dependent upon such

determination of imported goods whether are ores or concentrate of Titanium.

6. We take up the discussion of issues in seriatim.

7.1 The core dispute in the present appeal is whether the goods imported by the Appellant during the period January 2011 to October 2012 are classifiable as "ores" or as "concentrates" within the meaning of Chapter 26 of the Customs Tariff. The resolution of this issue necessarily turns on a correct interpretation of the Chapter Notes to Chapter 26 read with the HSN Explanatory Notes, and their application to the facts established on record.

7.2 We note that Chapter 26 of the First Schedule to the Customs Tariff Act covers "Ores, Slag and Ash". Chapter Note 2 to Chapter 26 provides that, 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 metals, even if they are intended for non-metallurgical purposes. The same note further clarifies that headings 2601 to 2617 do not include minerals which have been submitted to processes not normal to the metallurgical industry.

7.3 Chapter Note 4, which was inserted with effect from 01.03.2011, provides that in relation to the products of Chapter 26, the process of converting ores into concentrates shall amount to manufacture. This note does not, by itself, deem every ore to be a concentrate; it only declares that where a process of conversion into concentrate takes place, such process shall be treated as manufacture. Thus, Chapter Note 4 presupposes the existence of a factual process by which ores are converted into concentrates.

7.4 The HSN Explanatory Notes to Chapter 26 elaborate on this statutory scheme. The HSN clarifies that the term "ores" applies to metalliferous minerals associated with the substances in which they occur and with which they are extracted from the mine, and expressly includes metalliferous sands. Rutile sand, being a naturally occurring heavy mineral sand containing titanium dioxide, appears to fall within this description.

7.5 The HSN further explains that ores are seldom marketed before "preparation" for subsequent metallurgical operations, and that the most important preparatory processes are those aimed at concentrating the ores. However, a critical distinction is required to be drawn between normal preparatory processes and special

treatments. The Explanatory Notes state that products of headings 2601 to 2617 may be subjected to physical, physico-chemical or chemical operations, provided such operations are normal to the preparation of the ores for the extraction of metal and provided that **such operations do not alter the chemical composition of the basic compound which give rise to the desired metal.**

7.6 The HSN gives an illustrative list of operations considered normal to ore preparation, including crushing, grinding, screening, grading, washing, magnetic separation, gravimetric separation, flotation, agglomeration, drying and similar mechanical or physical processes. These processes, even if they result in removal of gangue or non-valuable material, do not divest the goods of their character as ores.

7.7 In contrast, the HSN defines "concentrates" as ores which have had part or all of the foreign matter removed by special treatments, either because such foreign matter might hamper subsequent metallurgical operations or with a view to economical transport. The emphasis is on special treatments, which go beyond normal mechanical or physical preparation. The HSN further clarifies that chemical processes such as roasting, calcination, sulphating, chlorinating, acid leaching or similar treatments <u>which alter</u>

the chemical composition or crystallographic structure of the basic compound are not considered normal preparation of ores and such processes are conspicuously absent in the present case. Where such alteration occurs, the resulting products may even fall outside Chapter 26.

7.8 Applying the above statutory and explanatory framework to the facts of the present case, we find that the Department has failed to establish that the rutile imported by the Appellant was subjected to any process amounting to "conversion of ores into concentrates" as contemplated by Chapter Note 4 of the Customs Tariff Act.

7.9 The evidence on record shows that the goods imported by the appellant were described in the Bills of Entry, commercial invoices, certificates of origin and load-port test certificates as rutile ore, rutile sand or titanium ore (rutile 92). These documents were examined by Customs at the time of import. More importantly, in respect of at least one consignment, Customs authorities themselves drew samples and sent them to the Chemical Examiner of the Custom House Laboratory with a specific query as to whether the goods were natural rutile ore or concentrates. Based on the Chemical Examiner's report, the goods were accepted as

rutile ore and cleared. This departmental test directly supports the appellant's claim that the goods were ores.

7.10 On the other hand, the Department's case rests on general technical literature, USA Geological Survey (USGS) publications and assumptions regarding the nature of rutile marketed by certain overseas suppliers. While such literature may describe rutile as a titanium mineral concentrate in a generic sense, classification under the Customs Tariff must be based on what the imported goods actually are, not on generalized descriptions or trade literature. The HSN makes it clear that metalliferous sands are ores and that metal content alone is not determinative. Naturally occurring rutile is known to contain high percentages of titanium dioxide even in its ore form. Therefore, the Revenue's reliance on high TiO_2 content, without establishing any special treatment or chemical beneficiation, is legally untenable.

7.11 Crucially, there is no evidence on record to show that the rutile imported by the Appellant underwent roasting, acid leaching, calcination or any other chemical or special treatment that altered its chemical composition or crystallographic structure. The processes described by the appellant and reflected in the evidence are limited to

separation of heavy mineral sands from ordinary sand, which is a process squarely recognised by the HSN as normal preparation of ores.

7.12 In these circumstances, the factual foundation necessary to invoke Chapter Note 4 is absent. Since no process of converting ores into concentrates has been established, Chapter Note 4 cannot be applied. A legal fiction cannot be invoked in the absence of the factual situation contemplated by the statute.

7.13 Accordingly, applying the Chapter Notes to Chapter 26 and the HSN Explanatory Notes to the facts of the present case, we hold that the goods imported by M/s. Sri Ragavendra Minerals are ores i.e., concentration of naturally occurring rutile sand. The impugned finding of the adjudicating authority treating the goods as "concentrates of titanium" is contrary to the statutory scheme of Chapter 26, the HSN Explanatory Notes and the evidence on record, and therefore cannot be sustained. If the aggregation/ beneficiation is obtained through the processes which do not affect the crystalline structure of the Rutile Sand, the imported product remains a ore.

7.14 The HSN Explanatory Notes to Chapter 26 recognise that ores may undergo physical and mechanical

processes such as washing, screening and gravity separation without losing their character as ores. Concentration, on the other hand, requires special treatment such as roasting or chemical beneficiation which alters the chemical composition or crystallographic structure of the ore.

7.15 In the present case, there is no evidence of roasting, leaching, acid treatment or chemical beneficiation. Mere high TiO_2 content cannot be determinative, as naturally occurring rutile is known to have high titanium dioxide content even in its ore form.

7.16 We find that the reliance placed by the Department on Star Industries v. Commissioner of Customs (Import), Raigad is misplaced. In that case, the ore had admittedly undergone roasting, a chemical process altering the chemical composition and crystallographic nature of the product. The ratio of that judgment rests squarely on the existence of such chemical treatment. The Hon'ble Supreme Court did not hold that high metal content or trade description per se converts an ore into a concentrate."

7.17 In the present case, no such process has been established. The factual foundation necessary to apply Star Industries is absent. The judgment, far from supporting the

Revenue, reinforces the principle that only when ores undergo special chemical processes do they cease to be ores.

7.18 The Appellant on the other hand relied upon: -

i. *Indian Rare Earths Ltd. Vs CCE 2002 (139) ELT 352 (Tri—Calcutta)* affirmed by the Supreme Court reported in *2009 (241) ELT A70 (S.C.),* wherein it was held that physical and mechanical separation of mineral sands does not amount to concentration and the resultant products remain ores.

ii. *Classic Microtech Pvt. Ltd. 2012 (285) ELT 418 (Tri-Ahmd), Malu Electrodes Pvt. Ltd. 2018(4) TMI 492-CESTAT Mumbai*, and *GEE Ltd. v. Commissioner of Customs, 2025 (1) TMI 996 (CESTAT Kolkata),* consistently hold that rutile/zircon sand subjected only to physical separation remains an ore and that supplier descriptions or technical literature cannot override consignment-specific test reports.

Limitation and Penalty

8.1 We have carefully examined the sample Bills of Entry and the connected import documents placed before us. The records produced include Bill of Entry No. 6928421 dated 25.05.2012, Bill of Entry No. 7392370 dated 16.07.2012, Bill of Entry No. 749680 dated 14.01.2011, Bill

of Entry No. 4875764 dated 10.10.2011 and Bill of Entry No. 4953563 dated 18.10.2011, along with their corresponding commercial invoices, load-port analysis certificates and allied import documents. On a perusal of these records, it is evident that the description of the goods in the commercial invoices exactly tallies with the description declared in the respective Bills of Entry. The goods have been consistently described as rutile ore / rutile sand / titanium ore (rutile), and this description has remained uniform across the supplier documents and the import declarations.

8.2 We note that in respect of Bill of Entry No. 4953563 dated 18.10.2011, the Department itself entertained a doubt and drew samples for detailed examination. The specific queries raised by the Department to the Chemical Examiner were not perfunctory but were pointed and comprehensive, including verification of description, nature of composition, whether the goods were natural rutile ore and whether the goods could be regarded as concentrates, with a clear reference to the HSN concept that concentrates are ores from which foreign matter is removed by special treatments. The Chemical Examiner's report, however, merely records that the goods have the characteristics of rutile. The TiO2 content was reported at 91.6%, which closely corresponds to the load-port analysis

certificate showing TiO2 content of 92.6%. Significantly, the test report does not state, even remotely, that the goods are concentrates or that they have undergone any special or chemical treatment. Thus, the only departmental test conducted during the relevant period supports the appellant's declaration and not the Department's allegation.

8.3 As regards the remaining four Bills of Entry, it is not in dispute that the consignments were accompanied by load-port analysis certificates issued by the suppliers, and no samples were drawn by the Department at the time of clearance. The Department has not alleged that these load-port certificates are fabricated or unreliable, nor has it produced any contrary test report in respect of these consignments. In the absence of any such evidence, the mere fact that samples were not drawn cannot be used against the appellant, particularly when the Department had full opportunity to do so at the time of assessment.

8.4 On the face of the record, we find no material to support the allegation of misdeclaration. There is no evidence of a parallel set of invoices, no discrepancy between invoice description and Bill of Entry description, no e-mails or correspondence suggesting a different nature of goods, and no admission by the appellant indicating that the

goods were other than what was declared. The entire allegation of misdeclaration rests solely on technical literature and generalised assumptions about the nature of rutile supplied by overseas producers. It is well settled that technical literature, without being correlated to the specific imported consignments, cannot override contemporaneous documentary and laboratory evidence. We therefore hold that the charge of misdeclaration of description under Section 111(m) of the Customs Act is not established.

8.5 Once the allegation of misdeclaration fails, the invocation of the extended period of limitation under the proviso to Section 28 of the Customs Act also cannot be sustained. The appellant has declared the goods based on supplier invoices and analysis certificates, all of which were placed before the assessing officers. The assessments were completed after scrutiny, and in one case, after chemical testing by the Department itself. There is thus complete disclosure of facts. In such circumstances, the dispute, if any, is purely one of interpretation as to whether rutile should be treated as ore or concentrate. It is settled law that a mere difference of opinion on classification or exemption, without any positive act of wilful misstatement or suppression with intent to evade duty, does not justify invocation of the extended period. In this context, the

reliance placed by the appellant on the decision in *M/s. GEE Limited v. Commissioner of Customs (Port), Kolkata,* reported in *2025 (1) TMI 996 (CESTAT Kolkata),* is apposite, wherein in a similar factual matrix involving rutile sand, it was held that extended period was not invokable in the absence of misdeclaration or suppression.

8.6 The appellant's reliance on the judgment of the Hon'ble Supreme Court in *Uniworth Textiles Ltd. v. Commissioner of Central Excise,* reported in *2013 (288) ELT 161 (SC),* is well founded. In the said judgment, the Hon'ble Supreme Court has authoritatively held that the extended period of limitation can be invoked only when there is a positive act of wilful misstatement or suppression of facts with intent to evade duty, and that mere non-payment of duty, wrong classification or incorrect claim of exemption, by itself, is insufficient. The Court further held that when all relevant facts are disclosed in statutory documents and are within the knowledge of the Department, invocation of the extended period on the basis of a subsequent change of opinion is impermissible.

8.7 In the present case, the appellant declared the goods in the Bills of Entry based on supplier's documents and test certificates, which were scrutinised by Customs at the

time of assessment. In one instance, the goods were even subjected to chemical testing by the Department itself and accepted as ore. In such circumstances, no element of wilful misstatement or suppression can be attributed to the appellant.

8.8 Consequently, the demand raised beyond the normal period of limitation is clearly time-barred. Even otherwise, once we have held on merits that the goods are correctly declared and classifiable as ores, the very foundation for the demand collapses.

8.9 The finding on limitation and misdeclaration has a direct bearing on the proposals for confiscation and penalty. Confiscation under Section 111(m) presupposes a finding that the goods are liable to confiscation on account of misdeclaration of value, description or other particulars. In the present case, having held that there is no misdeclaration of description and that the declarations in the Bills of Entry are truthful and supported by evidence, the goods cannot be held liable to confiscation. The reliance placed by the appellant on the judgment of the Hon'ble Delhi High Court in *Shantilal Mehta v. Union of India & Others, reported in 1983 (14) ELT 1715 (Del.),* is well founded. The Hon'ble High Court held that when goods are not available and when the

foundational requirement for confiscation itself is absent, imposition of redemption fine or penalty is unsustainable.

8.10 Further, penalty under Section 114A of the Customs Act is predicated on the existence of wilful misstatement or suppression of facts with intent to evade duty. As discussed above, the facts of the present case do not disclose any such intent. The appellant acted on the basis of supplier documents, declared the goods consistently, and cleared them after departmental scrutiny. In the absence of *mens rea*, penalty under Section 114A cannot be sustained.

8.11 In view of the foregoing discussion, we hold that (i) the allegation of misdeclaration is not proved, (ii) the extended period of limitation is not invokable, (iii) the demand is barred by limitation, and (iv) the consequential confiscation and penalties imposed in the impugned order are legally unsustainable and liable to be set aside.

9. Finally, we hold that: -

i. The goods imported by the appellant are “ores” and not “concentrates”.
ii. The denial of exemption under Notification No. 4/2006-CE and Notification No. 12/2012-CE is unsustainable.

iii. The impugned Order-in-Original No. 46984/2016 dated 29.04.2016 is set aside in its entirety.

10. The appeal is allowed with consequential relief, if any, in accordance with law.

(Order pronounced in open court on 27.03.2026)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

MK