**(2015) 11 CESTAT CK 0004**

**In the Customs, Excise And Service Tax Appellate Tribunal**

**Case No :** Customs Appeal Nos. 374, 375 Of 2009

M/s Cosmos Electrodes Pvt. Ltd. And Anr. — APPELLANT

Vs

CCE, Indore — RESPONDENT

**Date of Decision :** 04-11-2015

**Acts Referred:**

**Citation :** (2015) 11 CESTAT CK 0004

**Hon'ble Judges :** G. Raghuram, J;R. K. Singh, Technical Member

**Bench :** Division Bench

**Advocate :** Manish Saharan, Amresh Jain

**Final Decision :** Allowed

## Judgement

1. This appeal has been filed against order-in-appeal dated 12.02.2009 which upheld the order-in-original dated 30.09.2008 in terms of which the

appellant was denied the benefit of Notification No.4/2006-CE. dated 01.03.2006 on ""rutile welding grade'' and confirmed Customs duty demand of

Rs.89,665/- alongwith interest. Penalty of Rs.1,000/- was also imposed. The facts of the case, in brief, are as under:

The appellant imported rutile welding grade and claimed benefit of Notification No.4/2006-CE for the purpose of CVD. The lower adjudicating

authorities held that as per Chapter Note-2 of Chapter 26 the impugned goods did not qualify to be called ""ore"" and therefore benefit of Notification

No.4/2006-CE for the purpose of levy of CVD was not admissible.

2. The appellant has contended that the goods imported by it were classified under heading 26.14 of Customs Tariff and Chapter Note-2 of Chapter

26 of Customs Tariff in no way implies that the goods would not be categorised as ""ore"" for the purpose of Notification No.4/2006-CE.

3. Ld. DR on the other hand, stated that the lower adjudicating/ appellate authorities have analysed the issue in the light of Chapter Note-2 of Chapter

26 of Customs Tariff and have come to a finding that the impugned goods cannot be called ""ore"" for the purpose of granting exemption Notification

No.4/2006-CE.

4. We have considered the contentions of both sides. We find that Notification No.4/2006-CE inter-alia unconditionally exempts ores falling under

chapter heading 2601 to 2617. Chapter Note-2 to Chapter 26 states as under:

(2) For the purposes of headings 2601 to 2617, the term ""Ores"" means minerals of mineralogical species actually used in the metallurgical

industry for the extraction of mercury, of the metals of heading 2844 or of the metals of Section XIV or XV, even if they are intended for

non-metallurgical purposes. Heading 2601 to 2617 do not, however, include minerals which have been submitted to processes not normal to

the metallurgical industry"".

We do not find any evidence in the orders of the lower authorities that the impugned goods had been submitted to processes not normal to the

metallurgical industry. Further, the goods were classified by Customs authorities under sub-heading 26140031. Heading 2614 is reproduced below:

Chapter heading 2614 covers

-Titanium ores and concentrates.

261400 -Titanium ores and contrates

2614 00 10 - Limenite, unprocessed

261400 20 - Liminite, upgraded (beneficiated limonite including limonite ground)

- Rutile

2614 00 31 - Rate earth oxides including rutile sand 2614 00 39- Others

2614 00 90- Others

As is evident, CTH covers ""ores"" and ""concentrates"" only.

It is seen that nowhere in the lower adjudicating authorities orders it is brought out that the goods imported were concentrates. If the goods were not

concentrates and were classified under 2614, they had to be ""ore"". Chapter Note-2 of Chapter 26 clearly states that it is not necessary that for the

goods to be classified as ores they have to be necessarily intended for metallurgical purposes. From this it axiomatically follows that there was no

basis for the lower authorities to deny the benefit of Notification No. 4/2006-CE when they have themselves classified the impugned goods under 2614

and at no stage even hinted that the goods were ""concentrates"".

5. In the light of aforesaid analysis, the impugned order is not sustainable. Therefore, the impugned order is set aside and appeal allowed.

 