

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

Customs Appeal No. 10663 of 2013

(Arising out of OIA-189-191-2012-CUS-COMMR-A-KDL dated 19/12/2012 passed by Commissioner of Customs-KANDLA)

WELSPUN INDIA LIMITED

.....Appellant

VILLAGE : VARSHAMEDI,
TALUKA : ANJAR,
KUTCH-GUJARAT

VERSUS

C.C.- KANDLA

.....Respondent

CUSTOM HOUSE,
NEAR BALAJI TEMPLE,
KANDLA-GUJARAT

WITH

Customs Appeal No. 10664 of 2013

(Arising out of OIA-189-191-2012-CUS-COMMR-A-KDL dated 19/12/2012 passed by Commissioner of Customs-KANDLA)

WELSPUN INDIA LIMITED

.....Appellant

VILLAGE : VARSHAMEDI,
TALUKA : ANJAR,
KUTCH-GUJARAT

VERSUS

C.C.- KANDLA

.....Respondent

CUSTOM HOUSE,
NEAR BALAJI TEMPLE,
KANDLA-GUJARAT

AND

Customs Appeal No. 10665 of 2013

(Arising out of OIA-189-191-2012-CUS-COMMR-A-KDL dated 19/12/2012 passed by Commissioner of Customs-KANDLA)

WELSPUN INDIA LIMITED

.....Appellant

VILLAGE : VARSHAMEDI,
TALUKA : ANJAR,
KUTCH-GUJARAT

VERSUS

C.C.- KANDLA

.....Respondent

CUSTOM HOUSE,
NEAR BALAJI TEMPLE,
KANDLA-GUJARAT

APPEARANCE:

Shri S. Suriyanarayanan, Advocate for the Appellant

Shri Tara Prakash, Assistant Commissioner (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
 HON'BLE MEMBER (TECHNICAL), MR. RAJU**

FINAL Order No. A/ 10876-10878 /2023

DATE OF HEARING: 16.12.2022
DATE OF DECISION: 13.04.2023

RAMESH NAIR

1. All these appeals are directed against Order-in-Appeal No.189 to 191/2012/2012/Cus/Commr(A)/KDL dated 19/12/2012. Since these appeals arise out of the very same Order-in-appeal, they are being disposed of by a common order.
2. Briefly stated the facts of the case are that the Appellant had imported consignment of Indonesian Steam (non-coking) coal in bulk, falling under Chapter heading 2701 1920, claiming the benefit of CVD@1% vide Notification No. 1/2011-CE dated 01.03.2011. However, the department did not allow 1% CVD due to the CBEC Circular Instruction D.O. F.No. B-1/3/3011-TRU dated 25.03.2011 and levied CVD @5%. The Appellant filed protest letter and paid the CVD accordingly. Being aggrieved with assessment of Bills of Entry, the Appellant filed the appeal before the Commissioner (Appeals), who vide impugned order-in-appeal upheld the assessment order and rejected the appeals of the appellant. Hence , the present appeals before us.
3. The Ld. Counsel Shri S. Suriyanarayan appearing for the appellant submits that since the steam coal (non-coking) is not a manufactured products the levy of CVD could not have been upheld by the Ld. Commissioner (Appeals) by relying on a CBCE circular which is very general it items. No CVD was leviable as steam (non-coking) coal as it is not a manufactured product at all. He placed reliance on the following decisions.
 - (i) Commr. C.Ex & Cus., Bhubaneswar-I Vs. Tata Iron and Steel Co. Ltd. – 2003 (154) ELT 343 (SC)
 - (ii) SAIL Vs. Commissioner of Customs- 2008(230) ELT 647 (Tri. Kolkata)

4. He argued that the entire finding in paragraph 5.5 of impugned order –in-appeal is ab initio void and illegal inasmuch as once there is no dispute that the imported steam (non- coking) coal is not a manufactured products, there cannot be any justification for levy of any CVD based on the CBEC's general circular or otherwise. The finding of the Ld. Commissioner (Appeals) that imported steam coal attract CVD being "produced" is ab initio illegal inasmuch as the words 'manufactured' or 'produced' carry the same meaning as far as Section 2 (f) of the Central Excise Act, 1944 is concerned.
5. He also submits that revenue was never charge any CVD on imported coal due to the binding decisions.
6. The Ld. Authorized Representative Shri Tara Prakash, Assistant Commissioner (Authorized Representative) appearing for the Revenue opposed the contention of Ld. Counsel and reiterated the findings made by the Ld. Commissioner (Appeals)
7. We have carefully considered the submissions from both the sides and perused the records. On going through the entire facts of the case we find that in this case, the appellants' claim is that the goods imported i.e Coal by them would not attract CVD @ 5% since not manufactured product at all. However we find that in case of import for levy of CVD on goods, there is no criteria that the goods should be manufactured. The said levy is on import of the goods. The purpose and object of levy of additional duty (CVD) on imported articles is to counter-balance the excise duty leviable on the like articles made indigenously or the indigenous raw material used in the manufacture of like indigenous articles. In other words, Section 3 of the Customs Tariff Act has been enacted to provide the levy of CVD on imported goods at par with the excise duty

leviable on like goods manufactured in India, as has been held by the Constitution Bench of the Hon'ble Apex Court in the case of *Hyderabad Industries Ltd. v. UOI* [1999 (108) E.L.T. 321 (S.C.)].

8. It will also be relevant to peruse the provisions of Section 3 of the Customs Tariff Act, 1975, which are reproduced as under :-

"3. (1) Any article which is imported into India shall, in addition, be liable to a duty (hereafter in this section referred to as the additional duty) equal to the excise duty for the time being leviable on a like article if produced or manufactured in India and if such excise duty on a like article is leviable at any percentage of its value, the additional duty to which the imported article shall be so liable shall be calculated at that percentage of the value of the imported article :

Provided that in case of any alcoholic liquor for human consumption imported into India, the Central Government may, by notification in the Official Gazette, specify the rate of additional duty having regard to the Excise duty for the time being leviable on a like alcoholic liquor produced or manufactured in different States or, if a like alcoholic liquor is not produced or manufactured in any State, then, having regard to the Excise duty which would be leviable for the time being in different States on the class or description of alcoholic liquor to which such imported alcoholic liquor belongs.

Explanation.— In this sub-section, the expression "the excise duty for the time being leviable on a like article if produced or manufactured in India" means the excise duty for the time being in force which would be leviable on a like article if produced or manufactured in India or, if a like article is not so produced or manufactured, which would be leviable on the class or description of articles to which the imported article belongs, and where such duty is leviable at different rates, the highest duty."

The Explanation to the section makes it absolutely clear that when the goods manufactured in India are leviable to different rates of excise duty, CVD on like goods imported shall be at the highest rate of duty.

9. This issue relating to levy of CVD was also considered by the C.B.E. & C. at the time of introduction of 1% levy on 130 items including

Coal in the Budget 2011-12 and the C.B.E. & C. clarified as follows
vide Circular B-1/3/2011-TRU, dated 25-3-2011 :-

".... Doubts have been raised about the applicable CVD rate on the 130 items, on which Excise Duty @ 1% has been levied vide Notification 1/2011-C.E., dated 1-3-2011, when imported. It is further learnt that manual bills of entry have been permitted at certain customs locations as 1% CVD rate was not available in the system. This concessional rate of 1%, however, is available only if the Cenvat credit on inputs and input services is not availed of; otherwise all these items attract 5% Excise duty as prescribed vide notification 2/2011-C.E., dated 1-3-2011 and Tenth Schedule to the Finance Bill. At the time of updating of ICES, the Directorate of Systems had been advised not to feed Notification 1/2011-C.E., dated 1-3-2011 in the system as 1% rate will not be applicable for CVD purposes. There should have been no confusion on the subject. Since the CVD is levied to provide a level playing field for the domestic manufacturers, CVD is charged at a rate equal to excise duty rate. However, in respect of these 130 items, there are two excise duty rates. It needs to be appreciated that if CVD is levied @ 1%, the protection for the domestic manufacturer would be lost since in the country of origin, the overseas supplier enjoys input tax neutralization on goods exported to India (akin to availment of input tax credit), whereas on the other hand the domestic manufacturer suffers all the input taxes and 1% excise duty over and above that. Since 5% excise duty rate is payable when the cenvat credit of duties and taxes paid on inputs and input services is availed of, the tax treatment becomes equitable with the goods being imported into India, the input taxes having been neutralized in the country of export. As such, the CVD of 5% will be applicable in respect of all the goods covered under Notification 1/2011-C.E., dated 1-3-2011 and 1% rate will not apply."

10. Though the above Circular is not binding on this Tribunal, due consideration needs to be given as C.B.E C. is the authority concerned with implementation and administration of union indirect taxes in India. In the case of *Collector of Central Excise, Guntur v. Andhra Sugar Ltd.* - 1988 (38) E.L.T. 564 (S.C.), the Hon'ble Apex Court observed as follows :

"It is a well settled that the meaning ascribed by the authority issuing the Notification, is a good guide of a contemporaneous exposition of the position of law. Reference may be made to the observations of this Court in K.P. Varghese v. The Income Tax Officer, Ernakulam, [1982] 1

SCR 629. It is a well settled principle of interpretation that courts in construing a Statute will give much weight to the interpretation put upon it at the time of its enactment and since, by those whose duty has been to construe, execute and apply the same enactment."

Thus even applying the principles of contemporaneous exposition and administrative construction, the imported coal will attract CVD.

11. As regard alternative claim of benefit of exemption notification No.1/2011-C.E., dated 1-3-2011 whereby the effective rate of excise duty is prescribed @ 1%. Though the board in the above circular clarified that 1% concessional CVD is not applicable on imported coal but subsequently there have been some judgments on this issue which needs to be considered. For this matter we are of the view the assessing authority must reconsidered the applicability of concession rate of CVD of 1% in terms of notification No. 1/2011-C.E. dated 1.3.2011.
12. In the light of the foregoing, we hold that CVD is leviable on imported coal. However as regard rate of CVD as discussed in above para 10, the matter is remanded to the assessing authority. Accordingly, we dispose of these appeals by way of remand in the above terms to the assessing authority.

(Pronounced in the open court on 13.04.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Neha