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

REGIONAL BENCH- COURT NO.3

Customs Appeal No.10561 of 2022

(Arising out of OIA-MUN-CUSTM-000-APP-173-21-22dated 02/11/2021 passed by Commissioner of CUSTOMS-MUNDRA)

SURENDER SINGH PURAWAT ....**Appellant**
Proprietor Ms Jogniya Stone Nai Abadi Kota
Bigod Tahesil Mangalgad
Bhilwara, Bhilwara, Rajasthan

VERSUS

C.C.-Mundra ....**Respondent**
Office Of The Principal Commissionerate Of Customs,
Port User Buld. Custom House Mundra, Mundra
Kutch, Gujarat-370421

APPEARANCE:
Shri. N.K Tiwari, Consultant for the Appellant
Shri Sanjay Kumar, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (TECHNICAL), MR. RAJU
HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA

Final Order No. 12246 /2024

DATE OF HEARING: 30.09.2024
DATE OF DECISION:30.09.2024

RAJU

The matter was adjourned to ascertain the status of similar issue pending before Hon'ble High court of Rajasthan.

2. Learned Consultant appearing for the appellant points out that the appellants in case before Hon'ble High Court of Rajasthan have withdrawn the petition on the ground that in other similar matters, the Commissioner (Appeals) in Ahmedabd has set aside the orders and remanded the matters back to the original adjudicating authority. The grounds in the mention order are as follow:

"5. I observe that the appellants, among other things, have argued that export restriction was issued for beach sand minerals only and was not applicable to other type of minerals which are not in the nature of beach sand minerals. In this regard, appellants have, inter-alia, stated that the restriction was brought to stop the illegal use of beach sand minerals as is clear from the answer given in Lok Sabha in 2019 to a question raised on regulation of BSM (beach sand minerals); that the debate in the parliament also goes to show that BSMs are those heavy minerals which are sourced/ mined in coastal areas/ beaches, i.e., Tamil Nadu, Andhra Pradesh, Orissa, Kerala and Maharashtra. Appellants have further referred to IREL's answer to an RTI application confirming that BSM referred to in the notification dated 21.08.2018 has the same meaning as in section 2(c) of the Atomic Minerals Concession Rules, 2016, i.e., BSM sourced/ mined from teri or beach sand. The appellants have also insisted on re-testing of remnant samples about presence of Monazite or any other radioactive elements as, according to appellants, the restriction applied only to export of BSM Garnet which contains Monazite, a radioactive element, and not to all garnet. These are some of the new submissions made by the appellants and the adjudicating authority had no occasion to examine the issue in light of these submissions. The adjudicating authority was also requested to offer comments on the appeals filed, however, no response has been received. Hence, remitting of the case has become sine qua non to meet the ends of justice. Accordingly, the impugned orders are set aside and remitted to the lower authority for de- novo proceedings. While passing this order, no opinion / views have been expressed on the contentions raised by the appellants and also on the merits of the dispute, which shall be independently examined by the original authority. In this regard, I rely upon the case of Prem Steels P Ltd-2012-TIOL-1317-CESTAT-DEL and the case of Hawkins Cookers Ltd.-2012 (284) ELT 677(Tri.-Del), which have also relied upon case of Medico Labs-2004(173) ELT 117 (Guj.), wherein it has been held that Commissioner (Appeals) continues to have power of remand even after the amendment of Section 35(A) of the Central Excise Act, 1944 by Finance Act, 2001 w.e.f 11.5.2001.

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6. In view of the above, I remit the matter back to the adjudicating authority, who shall examine available facts, documents, submissions and all relevant case laws and then pass proper legal speaking order afresh after following principles of natural justice and adhering to the legal provisions."

2.1 It is seen that in instant case too the appellant could not get an opportunity to present their case before the original adjudicating authority. The said period coincided with in the pandemic period and therefore the appellant could not file any written reply or appear before the original adjudicating authority.

3. In these circumstances, in the interest of justice, the matter is remanded in the identical terms as specified in the order In-Appeal No. MUN-CUSTM-000-APP-192 TO 196-21-22 DATED 29.11.2021 for re-adjudication on the identical issues.

4. Appeal is allowed by way or remand to original adjudicating authority.

(Dictated and pronounced in the open court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Prachi