CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

Regional Bench COURT-2

Customs Appeal No. 635 of 2011

[Arising out of the Order-in-Appeal No. 207/2010 dated 10.12.2010 passed by the Commissioner of Customs (Appeals), Bangalore.]

Tumkur Minerals Pvt Ltd,

Adm, Office, Salgaocar House,
Off Dr. Francisco Luis Gomes Rd.
Vasco-da-gama,
Goa– 403 802 **.......Appellant**

VERSUS

Commissioner of Customs,

C.R. building, Queens Road,
P.B. NO. 5400, Bangalore
Karantaka - 560001 **....... Respondent**

Appearance:

Mr. Pramod N. Kathavi, Sr. Advocate Appeared for Appellant

Mr. K.A.Jathin, Authorized Representative for Respondent

Coram:

Hon'ble Mr. P.A. Augustian, Member (Judicial)

Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

<u>FINAL ORDER No. 20665 of 2024</u>

Date of Hearing: 17.01.2024

Date of Decision: 16.07.2024

Per: P.A. Augustian

The issue in the present appeal is whether the benefit of exemption Notification issued vide Notification No. 129/2008 dated 07.12.2008 should be extended to the export made by the Appellant.

2. The brief facts of the case are, appellant had exported 20,000 Metric Tonnes of Iron Ore Fines on payment of duty amounting to Rs. 72,32,383/-. The shipping bill was filed on 05.12.2008, the duty was paid on 05.12.2008 and Let Export Order (LEO) was also given on 05.12.2008. The exemption Notification No. 129/2008-Cus exempting the export duty on 'Iron Ore Fines' was issued on 07.12.2008. Subsequently, appellant filed refund claim for the duty paid on the ground that the Loading of export goods on board of vessel was done on 07.12.2008 and since the Notification was issued with immediate effect from 07.12.2008, they are eligible for the refund of duty paid by them. The Adjudication Authority held that there is no distinction between the 'export goods and the goods 'exported out of India' for the purpose of determination of rate of duty and tariff valuation of export goods. The Adjudication Authority also considered other provisions and rejected the refund claim. Aggrieved by said order, an appeal was filed before the Commissioner (Appeals) who has rejected the refund claim. Aggrieved by said order the present appeal is filed before the Tribunal.

3. When the appeal came up for hearing, Learned Counsel for the Appellant submits that the impugned order is issued without considering the various provisions of law. The Learned Counsel drew our attention to following provisions of the Customs Act, 1962.

"Section 16: ***Date for Determination of rate of duty and tariff valuation of export goods*** *- (1) the rate of duty and tariff valuation, if any, applicable to any export goods, shall be the rate and valuation in force, -*

(a) in the case of goods entered for export under section 50, on the date of which the proper officer makes an order permitting clearance and loading of the goods for exportation under section 51.

Section 50: Entry of goods for exportation (1) the exporter of any goods shall make entry thereof by presenting (electronically) (on the customs automated system) to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export (in such form and manner as may be prescribed)

Section 51: Clearence of goods for exportation (1) where the proper officer is satisfied that any goods entered for export are not prohibited goods and the exporter has paid the duty, if any, assessed thereon and any charges payable under this act in respect of the same, the proper officer may make an order permitting clearance and loading of the goods for exportation.

4. The Learned Counsel further submits that; after complying with the requirement of Section 50 of the Act, appellant had filed an application dated 04.12.2008 at Customs House, Parambur, Mangalore; the proper officer has passed an order on 07.12.2008 granting permission to the vessel in question to enter inward and unload cargo under section 31 of Customs Act, 1962 and drew our attention to the seal of the Customs House, Mangalore, dated 07.12.2008.

5. The Learned Counsel also drew our attention to the application for entry inward submitted by them under Section 31 of the Customs Act, 1962 on 07.12.2008 and permission was granted for entry inward to the vessel under Section 31 of Customs Act, 1962 at 12.45 hours on 07.12.2008. The Learned Counsel further submits that as per Section 39 of the Customs Act, 1962, loading of the goods is prohibited till it is permitted by the proper officer granting entry outward to such vessel. The order granting entry inward given by the proper officer is the one issued under Section 31 of the Act permitting clearance and loading of the goods for exportation. Section 39 of the Act does prohibit the Master of vessel from permitting loading until an order is issued by proper officer permitting loading. Thus, relevant date of export is the date of order issued under Section 31 of the Act and in appellant's case, it was on 07.12.2008, where proper officer issued an order permitting clearance and loading of the goods for exportation. Since date of Notification and the date permitting clearance and loading of the goods for exportation are on 07.12.2008, appellant is eligible for the benefit of Notification no 129/2008-cus dated 07.12.2008.

6. Learned Authorised Representative (AR) for the revenue reiterated the findings given by Adjudication and Appellate Authority and further drew our attention to the relevant provisions and submits that relevant date for determination of rate of duty or valuation of goods will have to be determined with reference to Section 16, Section 50 and Section 51 only. Section 39 has no relevance of such date for determination of rate of duty or valuation of export goods.

The Learned AR further submits that clause (a) of sub section (1) of Section 16 of the said Act provides that the rate of duty and tariff valuation applicable or the proper officer makes an order permitting clearance and loading of the goods for exportation under Section 51 of the Customs Act, 1962. The order passed in the nature of 'Let Export Order' is an order permitting the clearance and loading of the goods for exportation in accordance with Section 501 of the said Act. Since in the present case the shipping bill was filed on 05.12.2008 as per the Section 50 and export duty was paid on the same day. The proper officer has allowed clearance of goods on 05.12.2008, itself under Section 51 of the Customs Act, 1962 as evident from the entries in the shipping bill. Thus, the relevant date is 05.12.2008 and considering the date of Notification No. 129/2008 was on 07.12.2008, the benefit of said notification is not available to the Appellant, herein. The Learned Authorised Representative (AR)relied on the following decisions;

a. **Narayan Bandekar & Sons Pvt. Ltd. Vs. Commr. of. Cus & C.Ex., Goa – 2010 (259) E.L.T. 362(Bom.)**
b. **Commr. Of. Cus & C.Ex., Goa Vs. Narayan Bandekar & Sons Pvt. Ltd – 2010 (252) E.L.T 417 (Tri-Mum.)**
c. **Rajaram NS Bandekar & Co Pvt Ltd Vs. Commr. of Customs & C. Ex., Goa – 2018(11) TMI 239, Cestat, Mumbai**
d. **M/s Shiva Shankar Minerals Ltd. Vs. Commr. of Cus. & C.Ex., Guntur-2018(8) TMI 1531–Cestat, Hyderbad**

e. **M/s Jindal Saw Ltd. Vs. Commr. of Cus. (Export), Mumbai – 2012(280) E.L.T. 135 (Tri-Mumbai).**

f. **M/s Prime Mineral Exports Private Ltd. Vs. Union of India 2010 (257) E.L.T. 414 (Bom.)**

7. The Learned Counsel for the appellant submits that the case laws of **Narayan Bandekar & Sons Pvt. Ltd. Vs. Commr. of. Cus & C.Ex., Goa – 2010 (259) E.L.T. 362(Bom.)** and **Rajaram NS Bandekar & Co Pvt Ltd Vs. Commr. of Customs & C. Ex., Goa – 2018(11) TMI 239, Cestat, Mumbai** relied by the lower Authority are distinguishable, since the Hon'ble High Court of Bombay was dealing with a situation, which was entirely different from the present case before this Hon'ble Tribunal. Thus, the ratio of the above decisions is not applicable to the appellant's case.

8. Heard both sides and perused the records. As per the decisions relied by Learned Authorised Representative, including the judgement of the Hon'ble High Court of Bombay in the matter of **Narayan Bandekar & Sons Pvt. Ltd. Vs. Commr. of. Cus & C.Ex., Goa(supra),** is held that on a plain reading of Section 51 read with clause (a) of sub section (1) of Section 16 of the Customs Act, 1962, the date for determination of duty is the date on which an order was passed under Section 51 by the proper officer and date on which the actual loading of Iron Ore was started is totally irrelevant.

9. Further in the case of **M/s Shiva Shankar Minerals Ltd. Vs. Commr. of Cus. & C.Ex., Guntur (Supra)** wherein it is held that:

"3. The issue that falls for consideration is whether the appellant is eligible for the reduced rate of export duty on iron ore exported by them.

4. It is seen from the records that appellant filed shipping bills on 02.12.2008 for export of iron ore fines in bulk of 63% Fe content. The said shipping bills were assessed on the same date and export duty was discharged and Let Export order was issued on 02.12.2008 as per provisions of Section 51 of the Customs Act, 1962. Consignment was loaded for export on 10.12.2008. During the interregnum period the export duty on the iron ore was reduced by Notification No. 129/2008-Cus. dated 07.12.2008. Appellant filed the refund claim for the amount of duty discharged in excess of notified duty. Both the Lower Authorities held against the appellant and rejected their claim.

5. On careful consideration of the submissions made by both sides, we find there is no dispute that let export order of the iron ore was issued on 02.12.2008 and that is relevant date under 51. In order to be eligible for exemption under Notification No. 129/2008-Cus dated 10.12.2008 the let export order should have been post 10.12.2008, hence in this case the benefit of notification. We find both the Lower Authorities were coct coming to such a conclusion and we hold that the impugned orders are correct and legal and appeal is devoid of merits."

10. We find that even if the date of Notification and the date on which actual loading of 'Iron Ore Fines' was carried out are on 07.12.2008, or date of Notification was prior to 10.12.2008, the date on which vessel left territorial water of India, the benefit of Notification cannot be extended to the appellant, since the shipping bill was filed on 05.12.2008, it was assessed on the same day and the appellant paid export duty amounting to Rs. 73,32,383/- on the very

same day. Following the ratio of the judgment in **Narayan Bandekar & Sons Pvt. Ltd (Supra),** relevant date for considering the rate of duty in the present case is 05.12.2008 and appellant is not eligible for the benefit of Notification no 129/2008-Cus dated 7.12.2008.

11. In view of the above discussions and the decisions of the Tribunal, the appeal is dismissed.

(Order Pronounced in Open court on 16.07.2024)

(P.A.Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

Sasidhar…