CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20165 of 2020

[Arising out of Order-in-Appeal No. 173/2019 dated 27.12.2019 passed by the Commissioner of Customs (Appeals), Bangalore]

M/s. Mineral Enterprise Limited
Khanija Bhavan, III Floor
West Wing, No. 49
Race Course Road
Bengaluru – 560 001 **………Appellant(s)**

VERSUS

Commissioner of Customs
Mangalore
New Custom House
Panambur
Mangalore – 575 010 **…….Respondent(s)**

APPEARANCE:

Mr. N. Anand, Advocate for the Appellant
Mr. Maneesh Akhoury, Assistant Commissioner (AR) for the Respondent

CORAM:

Hon'ble Mr. P.A. Augustian, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

FINAL ORDER NO. 20929 / 2026

Date of Hearing: 04.02.2026
Date of Decision: 30.07.2026

PER: P.A. AUGUSTIAN

The issue in the present appeal is regarding demand of differential duty in respect of the goods, 'Iron Ore Fines' exported by the appellant.

2. The brief facts are Appellant filed shipping Bill No. 428 dated 08.05.2007 and shipping Bill No. 486 dated 18.05.2007 for export of 'Iron Ore Fines' declaring the Fe content below 62% and paid export

duty as applicable. As per Notification No. 62/2007-Cus dated 03.05.2007 Customs duty payable for the impugned goods is Rs. 50/- PMT if the Fe content is 62% and below and in case the Fe content is more than 62%, the Customs duty payable is Rs.300/- PMT as per Notification No.25/2007-Cus dated 01.03.2007. Thereafter, alleging misdeclaration in the Fe content, proceedings were initiated for demanding differential duty and aggrieved by the order, an appeal was filed before the Commissioner (Appeals) and Commissioner (Appeals) as per the order dated 18.03.2008 directed the lower authority to pass speaking order. However, appellant filed an appeal before this Tribunal and this Tribunal remanded the matter to Commissioner (Appeals) to consider the issue on merit and to finalize the issue. Thereafter, Adjudication Authority as per the Order-in-Original dated 24.03.2009 finalised the provisional assessments confirming differential duty. Aggrieved by the said order, an appeal was filed before this Tribunal and this Tribunal as per Final Order No. 1220/2009 dated 18.09.2009 remanded the matter for the consideration of Commissioner (Appeals) as two parallel proceedings should not be conducted on the very same issue. On remand, Commissioner (Appeals) directed the appellant to pay an amount of Rs. 40,00,000/- as pre-deposit. When a petition was filed for modification of the said order, it was dismissed by the Commissioner (Appeals) on 14.08.2013. Aggrieved by said order, an appeal was filed before this Tribunal and this Tribunal as per the Final Order No. 20279/2015 dated 20.02.2015 set aside the order for pre-deposit and directed the Commissioner (Appeals) to decide the issue on merit without insisting for pre-deposit. As directed, Commissioner (Appeals) as per the order dated 27.12.2019 held that appellant is not eligible for concessional rate of duty and directed the appellant to pay differential duty. Aggrieved by said order, present appeal is filed.

3. When the appeal came up for hearing, learned Counsel draws our attention to the chemical examination report of M/s. Mitra S.K. Private Limited dated 15.05.2007 showing Fe content as 60.70%. Further as per the test report of the inspection agency in Chennai also it is showing chemical composition where Fe content is 61.38%. Further, as per the

report relied by the Revenue in test memo dated 29.05.2007 against shipping Bill No. 428 dated 08.05.2007, the iron content of the sample on trial basis is 62.1%. Further as per the test memo dated 07.06.2007 against shipping Bill No. 486 dated 18.05.2007, the Fe content is 62.4%. The Learned Counsel submits that the testing of samples were done nearly after a lapse of 4 (four) months and 3 (three) months, respectively from the date of taking of samples and that the testing was done on 'dry basis'. Further in both the shipping bills the Fe content of the impugned goods is not more than 64%. Learned counsel further draws our attention to the Circular No. 12/2014-Cus. dated 17.11.2014 wherein it is clarified as under:

> "(*c*) *Upon receipt of the load port test report and discharge port test report the proper officer shall compare the two reports with the terms set out in the contract. Where variations in the two test reports are within tolerance limits provided in the contract and do not impinge upon the declared price, the proper officer may proceed to finalize the provisionally assessed shipping bill in terms of the provisions of Section 14 and the Customs Valuation (Determination of Value of Export Goods) Rules, 2007.*
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> *(d) In cases where the load port test report and discharge port test report show a variation, so as to impinge upon the price, the proper officer shall proceed to redetermine the value of the goods in terms of Customs Valuation (Determination of Value of Export Goods) Rules, 2007. In no case, shall a price based upon the average of the two test reports be accepted for the purposes of arriving at the assessable value.*
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> *……..*
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> *(f) The Custom Houses will ensure that the shipping bills are finally assessed within 30 days of the receipt of all documents. However, this time limit shall not apply to cases under investigation for related party transactions, which shall be governed by the circular relating to investigations by SVBs."*

4. Learned Counsel further submits that the issue is no more *res integra* and considered by the Hon'ble Supreme Court in the matter of **Union of India Vs. Gangadhar Narsingdas Aggarwal - 1997 (89) E.L.T. 19 (S.C)** and held that –

> *"3. By Notification No. GSR 1152, dated 24th July, 1987 issued under Section 25(1) of the Customs Act, the Government exempted iron ore fines falling under Item 29 of the Second Schedule to the Tariff Act when exported out of India from so much of the duty leviable thereon as is in excess of Rs. 3/- per metric ton, where the iron content in the iron ore fines was below 62% and where it exceeds 62% so much of the duty as is in excess of Rs. 4/- per metric ton. By another Notification dated 31st August, 1968 the Government exempted lumpy iron ore falling under Item 28 of the Second Schedule to the Tariff Act when exported out of India from so much of the duty as was in excess of the duty shown in Column (iii) depending on the iron content in the iron ore. It may here be mentioned that the duty had to be determined on the basis of weight of the commodity at the relevant point of time. In the case of lumpy iron ore where the percentage of iron was 60% or more but less than 63% the duty was restricted to Rs. 6/- per metric ton, where it was 58% or more but less than 60% it was restricted to Rs. 5/- per metric ton and where it was less than 58% it was restricted to Rs. 4/- per metric ton. It will thus be seen that under both the Notifications referred to above the duty was relatable to weight depending on the iron content in the ore or the ore fines. The question which was posed before the High Court was whether the percentage of iron content had to be determined after ignoring moisture in the lump or the percentage had to be determined taking all the impurities including moisture into account. The Revenue opted for the first method whereas the assessees contended that the percentage had to be determined taking all the impurities including moisture into account. The learned Single Judge in the High Court ruled in favour of the assessee and the Division Bench*

> *agreed with the view taken by the learned Single Judge and hence these appeals.*
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> *4. Mr. Baypayee, the learned Counsel for the Revenue, strongly contended that the method of determining the iron content in the iron ore and the iron fines is to first eliminate the moisture and then the other impurities and ascertain the content of iron and determine its percentage without taking the moisture into consideration. This, he submitted, was the method which is normally employed under the ISI standard as well as by Chemical Analysts who are called upon to determine iron content in lumpy iron ore or iron ore fines. It is immaterial what method one adopts for the purposes of separating the iron content from the lumpy iron ore but the percentage has to be determined from the total weight which was available at the given point of time after the iron content is determined. That is because the duty is relatable to weight and, therefore, once the iron content is determined keeping in mind the total weight the percentage can be determined separating the iron content from the rest of the impurities inclusive of moisture and thereafter ascertain in which category the lumpy iron ore would fall for the purposes of charging duty under the aforesaid Notifications. This view which the learned Single Judge took and which came to be affirmed by the Division Bench of the High Court appears to us to be the correct view to take, for the reason that if the percentage of iron content is determined after ignoring the moisture the percentage would not be relatable to the lumpy iron ore weighed at the relevant point of time for the purposes of charging duty. We, therefore, do not think that the High Court committed any mistake in the view it took. Even if two views were possible the view taken by the High Court being a plausible one would not call for intervention by this Court."*

5. Learned Counsel further submits that there is undue delay on the part of the Revenue to conduct examination of the goods and as held by

this Tribunal in the matter of **Alpine International Vs. Commissioner of Customs, Mangalore - 2008 (224) E.L.T. 331 (Tri.-Bang.),** where Tribunal held as follows:

> *"4. I heard both sides, learned Advocate pointed out that even though the samples were drawn by the department at the time of export the tests appeared to have been conducted after a fairly long gap and therefore, the test reports obtained after lapse of considerable time from the date of export cannot be accepted because moisture content in the iron ore gradually evaporates and definitely when the test is conducted at a later time, percentage of iron ore would be more. However, at the time of export, the appellants had submitted a certificate from a very reputed organization and there is no reason for the Revenue for not accepting the same. He also relied on the decision of the High Court of Judicial Commissioner (Goa, Daman & Diu) in the case of Sociedade De Fomento Industrial Pvt. Ltd. v. K.C. Lakiri And another [1987 (30) E.L.T. 686 (Goa)] wherein it is held that:*
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>> *"For determination of the Fe content it is not enough to rely on the analysis of only the dry ore but is necessary to determine the Fe content in respect of moist iron ore - The percentage of Fe contents determined on dry basis cannot be taken as percentage of Fe contents in respect of the iron ore which is moist - Assessment done by the Customs authorities on the percentage of Fe contents on dry basis is, therefore, incorrect and illegal."*

6. Learned Counsel also draws our attention to the decision of this Tribunal in the appellants' own case-**Mineral Enterprises Ltd. Vs. Commissioner of Customs, Mangalore - 2010 (253) E.L.T. 241 (Tri.-Bang.)** wherein it is held as follows:

> *"8. We find that the consignment was exported by the appellant on 4-3-2005. Samples were drawn by the authorities on 4-3-2005. The samples were sent to Deputy Chief Chemist for*

analysis. We find from the analysis report of the Chief Chemist that the analysis was done by him and report was submitted after almost three months of the export….."

…….................

9. We also find that revenue aggrieved by such an order and they took this matter in a Civil Appeal before the Hon'ble Supreme Court and the Apex Court (1997 (89) E.L.T. 19 (SC)] have upheld the decision of the Hon'ble High Court of Bombay. The ratio of the said decision is that whenever any sample has to be tested, it has to be tested in the condition in which goods were exported. If it be so, we find that the Deputy Chief Chemist report as reproduced herein above cannot be relied upon by the Revenue.

10. We find that this Bench in the case of Taurion Iron & Steel Company Pvt. Ltd. (supra) had an occasion to consider an identical issue. We find that the paragraph 6 of the said order is very relevant for the purpose of the case before us, hence we reproduce the same.

> *"We have gone through the records of the case carefully. The appellants have stated that the sample was not taken in accordance with the Public Notice. On the other hand, the Revenue has contended that they would not be obliged to go by the test report submitted by the appellant as well as the test report of the samples at the destination Port. Now in the present case, concessional rate of duty is available only when the iron content is less 62%, According to the appellant the said percentage is less than 62%......"*
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> *………...........*
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> *In terms of the destination port certificate the iron content is less than 62%. It is seen that in the test report given by the destination Port as well as by M/s. Mitra S.K. Pvt. Ltd., the Chemical composition in terms of iron and other impurities is also given. Particularly, the moisture content is given even in the certificate given at China, destination Port. The proportion*

of other impurities like Aluminium, Silica, Aluminium oxide. Phosphorous, Moisture is given, whereas when one sees the reports of the Chemical Examiner, he had given only the percentage of iron and the other percentage is not known. It is not known how the percentage was calculated as to whether it was calculated after the moisture was removed or not or whether moisture was taken into account while calculating the percentage of iron. In any case, when a reputed company which has also been recognized by the Ministry of Commerce and Industries has given the test report and when that test report is in variance with the report of Chemical Examiner, the request of the appellant for re-test ought to have been considered favourably. This has not been done. This is utterly a denial of the Principles of 'Natural Justice.' In any case, we do not find any strong reason for rejecting the test report produced by the appellant from two sources, one from reputed testing organization and the other from the destination Port. The evidence also has been produced that payment has been made based on the test result at the destination port. When it is less than 62% depending upon the shortage, the penalties have been paid by the exporter. In view of these factors, we find that the impugned order which has been passed in a very cursory manner without taking into account the submission of the party is liable to be set aside. In other words, the impugned order has no merits. Hence we allow the appeal with consequential relief. Thus the appeal and the cross objection are disposed of."

7. Learned Counsel further draws our attention to the finding of the Adjudication Authority to find out the veracity of test report produced by the appellant from M/s. Mitra S.K. Pvt. Ltd. and credibility of the certificate, wherein Adjudication Authority held as under:

> "15. On a careful perusal of the said report it is noted that "our Central laboratory is accredited by NABL for ISO 17025" below their emblem and name and the address is mentioned as Plot No.

M-13, KSSIDC Industrial Estate Dam Road, Hospet-583203. Further, on the right hand side ISO 9001-2000 was stated to be certified for H.O. Central Lab and Haldia Site. It clearly shows that the said certificate produced by the exporter as meeting standards cannot be treated as the certificate issued by an accredited lab since only one of their lab was accredited. The same was also stated to have been issued by an authorised signatory-independent surveyor at the loading port. Accordingly, it can by no stretch of imagination be considered as the certificate issued by the accredited lab as stated by them. Further, the certificate of quality purported to have been issued for vessel. M. V. J. Friend pertaining to shipping bill No. 0428/2007 dated 8-5-2007 was on the basis of samples drawn by their representative between 8-5-2007 to 12-5-2007 and the certificate is dated 15-5-2007. Similarly in the purported certificate of analysis dated 29-5-2007 pertaining to 486/18.05.2007 the samples were allegedly drawn by their representative from 21-5-2007 to 27-5-2007. One does not need to do research to conclude that the analysis report of samples allegedly drawn at Mangalore port was not done by their purportedly accredited Central lab. Further, the sampling was stated to have been done by the representatives of surveyors. No Customs officer was associated with such sampling and it is not known what procedure had been adopted to draw such samples. Evidently, the alleged certificates are full of infirmities and contradictions. Accordingly, without any hesitation I conclude that the said certificates cannot be treated as credible test reports corresponding to the export goods. Accordingly, I conclude that the exporters have miserably failed in substantiating their case about the Fe content of the export consignment."

8. Learned Authorized Representative (AR) for the Revenue reiterated the findings in the impugned order and submits that issue was considered by the Tribunal in the matter of **Hothur Traders Vs. CC, Chennai, Final Order No. 41458/2025 dated 11.12.2025** remanded the matter with the observation that -

"8. The impugned order and the judgments cited by the rival parties pre-date the above judgment of the Constitutional Courts. The Original Authority also did not have an opportunity to consider the same while deciding the issue. We feel that the matter needs to be determined afresh by adopting the principles set out in the judgments cited above."

9. Heard both sides and perused the records.

10. We find that the issue is no more *res integra* and is settled as per the decision of this Tribunal in the matter of **Mineral Enterprises Ltd. (supra)**. Following the ratio of the same, the impugned order is unsustainable and liable to be set aside.

11. Accordingly, the impugned order is set aside and appeal is allowed with consequential relief, if any, in accordance with law.

(Order pronounced in open court on 30.07.2026)

(P.A. Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

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