

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

**Customs Miscellaneous Application No. 40471 of 2023
and
Customs Appeal No. 40482 of 2014**

(Arising out of Order in Original No. 22760/2013 dated 29.11.2013 passed by the Commissioner of Customs (Seaport – Export), Chennai)

Hothur Traders

Hothur Towers
No. 153, Amarjyothi Layout
Ring Road, Domlur Post
Bangalore – 560 071.

Appellant

Vs.

Commissioner of Customs

(Seaport – Export)
Custom House,
60, Rajaji Salai, Chennai – 600 001.

Respondent

APPEARANCE:

Shri Abhinav Hamsaraman, Advocate and
Shri S. Muthuvenkataraman, Advocate for the Appellant
Smt. Anandalakshmi Ganeshram, Authorised Representative for the Respondent

Hon'ble Shri M. Ajit Kumar, Member (Technical)
Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NO. 41458/2025

Date of Hearing: 10.07.2025
Date of Decision: 11.12.2025

Per M. Ajit Kumar,

This appeal is filed by the appellant Order in Original No. 22760/2013 dated 29.11.2013 passed by the Commissioner of Customs (Seaport – Export) Chennai. (impugned order). The appellant has also filed a miscellaneous application for raising additional grounds in the appeal.

2. Brief facts of the case are that on specific intelligence gathered by DRI, it appeared that the appellant, a 100% EOU, had evaded

Customs duty payable on their iron ore exports during the period from 13.06.2008 to 30.11.2010 by resorting to misdeclaration of value and quantity shipped. The facts in brief are that the appellant, an export-oriented unit, received a Letter of Permission from the Cochin Special Economic Zone on 22.04.2008 for exporting High Grade Calibrated Iron Ore and High Grade Iron Ore Fines with Fe content above 64%. At the time of export, the appellant allegedly declared that the cargo met the said Fe grade, and Customs accepted the declaration without sampling or requiring a provisional duty bond. The department alleges that the contract between the appellant and the buyers set the base supply price per Dry Metric Tonne (**DMT**) on either Free on Board (**FOB**) or Cost & Freight (**CFR**) basis, with adjustments for actual iron content and other elements like phosphorus and sulphur agreed upon between exporter and buyer. During shipping, the appellant declared the maximum moisture allowed by contract in the Shipping Bills, calculating the DMT quantity accordingly. The FOB value provided to Customs was based on this DMT amount and the unit price specified in the contract, with duties paid on the declared value. Surveyors appointed by either party at both loading and unloading ports sampled and analysed the goods, issuing certificates on the actual moisture and DMT quantities after each shipment. Frequently, when the CIQ (Entry-Exit Inspection and Quarantine Bureau of the People's Republic of China) performed analysis at the Chinese port, their results took precedence over those from the load port, which were considered provisional. It was often discovered that surveyors found lower actual moisture than reported to Customs during shipment. After export, the appellant issued provisional or final commercial invoices reflecting

higher export values than those declared to Customs. For CIQ-surveyed shipments, buyers paid roughly 95–98% of the provisional invoice amount upon the goods' arrival and completion of CIQ analysis, after which the appellant would issue a final invoice adjusting the sale quantity and price and collect any balance due. When only the load port survey or provisional invoices were used, payments were made as per the said invoices. Customs alleges that the appellant mis-declared the iron grade, DMT quantity, and export value to avoid duty, withholding documentation such as weight certificates, quality certificates, invoices, and bank records showing actual receipts. Contracts given to Customs showed a higher grade (64% Fe), but addenda sometimes indicated a lower grade without notifying Customs. From June 2008 to November 2010, the appellant exported iron ore fines through Chennai Port, underreporting quantities and values, leading to short payment of export duties. Despite submitting certified documents for assessment, the appellant intentionally mis-declared the true grade and value—cargo below 64% Fe was claimed as above, and final invoice values exceeded Customs declarations. Independent surveys revealed discrepancies in moisture and DMT quantities that were not disclosed, and alternate invoices with higher values were not furnished to Customs. After following the due process of law, the Ld. Commissioner rejected the FOB value declared and redetermined the value and demanded differential duty of Rs.61,64,395/- under sec. 28(8) of the Customs Act, 1962 along with interest and imposed equal penalty under sec. 114A and Rs.1,00,000/- under sec. 114AA of the Customs Act, 1962. Since the goods were not

physically available for confiscation, the goods were not confiscated. Aggrieved by the said order, the appellant is before this Tribunal.

3. The learned Advocates Shri Abhinav Hamsaraman and Shri S. Muthuvenkataraman, appeared for the appellant and Ld. Authorized Representative Smt. Anandalakshmi Ganeshram, appeared for the respondent.

3.1 The Ld. Counsels for the appellant submitted that they had filed a Miscellaneous Petition dated 21/11/2023, for raising an additional ground that in the absence of an entrustment under section 6 of the Customs Act 1962, an officer of DRI will not have jurisdiction to exercise the function entrusted to Customs Officers under the provisions of the Customs Act. On merits they stated that minor quantity variations (2-4%) in bulk exports were unintentional, with moisture increases at Chennai Port caused by water spraying, and that test reports are only available after shipping. They noted minimal differences in Fe content, with Indian tests consistently showing higher levels than Chinese CIQ results. Payment is based on Disport test results as per contract, despite evidence of higher Fe content. Only two contracts were amended post-shipment at the buyer's insistence, not affecting transaction value. The appellant also claimed the department failed to justify not invoking the extended period in the show cause notice. Reliance was placed on the following judgments:

- i) **Commissioner of Customs (Prev.), Jamnagar Vs Hindustan Copper Ltd.** [2016 (331) ELT 99 (Tri-Ahd)]
- ii) **Hy-Grade Pellets Ltd Vs Commissioner of C. Ex. Vishakapatnam** [2003 (153) ELT 409 (Tri. – Bang)]
- iii) **Moorgate Industries (I) Pvt Ltd Vs Commissioner of Customs (Port)** [(2023) 13 Centax 306 (Tri-Cal)]

- iv) **Sociedade De Fomento Industrial Pvt Ltd Vs KC Lakiri and Anr** [1987 (30) ELT 686 (Goa)]
- v) **Narayan Bandekar & Sons Pvt Ltd Vs Commr of Customs & Central Excise, Goa** [2010 (259) ELT 362 (Bom.)]

They prayed that the order may be set aside.

3.2 Smt. Anandalakshmi Ganeshram, Ld. Authorized Representative reiterated the findings in the impugned order. She relied on the following judgments:

- i) **Commr. Of Central Tax, Visakhapatnam-GST Vs GNG Exports** [2019 (370) ELT 798 (Tri. – Hyd.)] and;
- ii) **Commr. Of Customs, Vijayawada Vs Kimmi Steels Pvt Ltd.** [2019 (368) ELT 92 (Tri. – Hyd.)]

She further stated that the issue relating to the jurisdiction of a DRI officer to issue a SCN has been settled by the Hon'ble Supreme Court in its judgment in **COMMISSIONER OF CUSTOMS Vs M/S CANON INDIA PVT. LTD.** [2024 INSC 854] and hence the submissions made in Miscellaneous Petition merits rejection.

4. Heard both sides and gone through the facts.

5. We take up the issue of jurisdiction first. We find that a Coordinate Bench of this Tribunal at Chennai has examined a similar matter pertaining to jurisdiction of DRI officers issuing SCN's, in its FINAL ORDER NOS. 40832-40840/2025, Dated: 21.08.2025, in the case of **Manasa Impex Services Vs Commissioner of Customs (Preventive), Trichy**, speaking through one of us [Shri M. Ajit Kumar. Member (Technical)]. The relevant portion of which is self-explanatory and is reproduced below:

"6. Much water has flown, since the judgment of the Hon'ble Supreme court in **Commissioner of Customs Vs. Syed Ali** [2011 (265) ELT 17 (SC)]. A three Judge Bench of the Hon'ble Supreme Court in REVIEW PETITION NO. 400

OF 2021, in the case of **COMMISSIONER OF CUSTOMS Vs M/S CANON INDIA PVT. LTD.** [2024 INSC 854] (Also referred to as **Canon India -II**), reviewed its earlier order which held that the officers of DRI are not 'proper officers' within the meaning of Section 28(4) of the Customs Act. The Hon'ble Court held that Circular No.4/99 dated 15.02.1999 issued by the Central Board of Excise and Customs (**CBEC**), which empowered officers of DRI to issue show-cause notices under S.28 of the Act as well as Notification no. 44/2011 dated 06.07.2011 which assigned the functions of "proper officers" for the purposes of Sections 17 and 28 to the officers of the DRI were not brought to the notice of the Apex Court during the proceedings in Civil Appeal No. 1827 of 2018, dated 09.03.202, titled **M/s Canon India Private Ltd. Vs Commissioner of Customs** (Also referred to as **Canon India - I**). The Judgment also set aside the decision of the Hon'ble High Court of Delhi rendered in the case of **Mangali Impex Ltd. Vs Union of India reported** [(2016) SCC Online Del 2597] and upheld the view taken by the Hon'ble High Court of Bombay in the case of **Sunil Gupta Vs Union of India and Others** [(2014) SCC Online Bom 1742]. It also upheld the constitutional validity of Section 97 of the Finance Act, 2022."

We hence do not find any substance in the submissions made in the Miscellaneous Petition and reject the same.

6. We find the dispute for the period from 13.06.2008 to 30.11.2010, relates to the valuation and payment of duty on High Grade Calibrated Iron Ore and High-Grade Iron Ore Fines with Fe content above 64%. The duty on the iron ore had to be determined on the basis of weight of the commodity at the relevant point of time and the actual iron content along with other elements like phosphorus and sulphur agreed upon between exporter and buyer. We find that the judgments cited by the rival parties have surprisingly not referred to the landmark judgement of the Supreme Court in **Union of India Vs Gangadhar Narsingdas Aggarwal** [1997 (89) E.L.T. 19 (SC)], in resolving the issue. The Hon'ble Bombay High Court (Goa Bench) in its

judgment in **V.M. Salgaocar and Brothers Pvt. Ltd. Vs Assistant Commissioner of Customs (Export)** [(2023) 11 Centax 215 (Bom.)], had an occasion to examine the said judgment along with the earlier judgments of the High Court that were the subject of appeal in the said case along with TRU's clarification on the matter and laid out the principles to be followed while determining the duty payable on iron ore exports. Relevant portion of the said judgment is reproduced below:

"42. It is thus clear that the Supreme Court in affirming the view of the learned Single Judge as also the learned Division Bench in the case of Gangadhar Agarwal [***Union of India Vs Gangadhar Narsingdas Aggarwal*** [1997 (89) E.L.T. 19 (SC)], has approved the WMT method considering the fact that the goods (iron ore) is required to be considered in its natural form at the time of its export which contain the moisture and other impurities. **The following are the principles which can be culled out from the said three judgments in Gangadhar Agarwal's case (supra), in regard to the classification of the Fe (iron) content in the iron ore for the purpose of levy export duty:-**

- (i) The *iron ore* when subjected to export, is exported in its natural condition so as to include impurities and moisture.
- (ii) It is not in dispute that there is no method or formula to determine the iron contents while the goods are in moist condition. The percentage of iron content in the iron ore is calculated by adopting a certain formula such formula has no scientific backing and the formula is based on approximate conclusion. Such formula is recognized not only in our country but also universally.
- (iii) It is a recognized practice to determine iron content in the goods (iron ore) in moist condition on an appropriate basis by finding out the iron content in dry sample analysis. What is relevant is the condition in which iron ore is presented to the customs authorities for export namely, the condition of the goods on the date of the export. If the condition of the goods on the date of the export is such, that it contains impurities and moisture

and that it is not purely only iron ore then, in that regard, the universally applied formula would become applicable to determine the percentage of iron ore in the condition of the goods on the date of the export.

- (iv) The Government having accepted one principle in holding the exporter to the condition of the goods on the date of the export, a different principle cannot be adopted while determining the customs duty. **Thus, if the weightment of the exportable goods is made while it is in moist condition, then it cannot be accepted that the iron content cannot be determined while the goods are in moist condition.**
- (v) It is not correct for the Revenue to take a position that as it is not possible by a physical analysis to determine the iron ore content in moist lumpy iron ore or moist iron ore fines, because moist iron ore fines and moist iron ore has to be dried for finding out the iron contents to be determined by the method of analysis extended by the Indian Standard Institute and the result of such analysis, by applying such method must be made applicable directly or straight away to determine the iron content in the iron ore being exported, as it is not the practice that lumpy iron ore and moist iron ore fines are dried for the purpose of determining the iron contents.
- (vi) Although it is true that there is a mathematical formula by which on the basis of the result of such analysis, the iron content in moist lumpy iron ore and moist iron ore fines, can be easily determined. Such formula is being regularly applied by the expert laboratories not only in India but also other countries. **A certificate issued by such laboratories in regard to the iron content in the moist iron ore and moist lumpy iron ore being exported, indicating the percentage of the iron content in the goods subject matter of export, needs to be accepted.**
- (vii) Merely because in respect of moist iron ore, iron content cannot be determined directly by physical analysis, this cannot lead to a result that the iron ore content cannot be determined at all or that the assessee should be deprived of its just claim on such footing.
- (viii) **It is immaterial what method one adopts for the purpose 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." This is because the duty is relatable to weight and therefore once the iron content is determined, keeping in mind the total weight, the percentage of iron ore can be determined separating the iron content from rest of the impurities inclusive of moisture and thereafter to be ascertained in which category the lumpy iron ore would fall for the purpose of charging duty under the Tariff items/notification.

- (ix) The percentage of iron ore content is determined after ignoring the moisture, the percentage would not be relatable to the lumpy iron ore weighed at the relevant time for the purpose of charging duty.

7. In **Gangadhar Narsingdas Aggarwal** (supra), the Hon'ble Supreme Court had held as under:

"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."
(emphasis added)

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 considered 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. Having rejected the Miscellaneous Petition filed by the appellant as at para 5. above, we remand the appeal to the Original Authority to decide the issue afresh in denovo proceedings. The appellant is at liberty to advance arguments both orally and in writing on the merits of the case. All contentions are left open. The appellant should also co-operate with the adjudicating authority in completing the process expeditiously and in any case within ninety days of receipt of this order. The appellant is eligible for consequential relief, if any, as per law. The appeal and Miscellaneous Petition are disposed of on the aforesaid terms.

(Order pronounced in open court on 11.12.2025)

(AJAYAN T.V.)
Member (Judicial)

(M. AJIT KUMAR)
Member (Technical)

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