**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL**
**REGIONAL BENCH AT HYDERABAD**
Division Bench
Court – I

**Appeal No. C/2077/2010**

(Arising out of Order-in-Appeal No. 07/2010 (V-II) Cus dated 02.08.2010 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Visakhapatnam)

**M/s Zeenath Transport Company …..Appellant(s)**

**Vs.**

**Commissioner of Customs & Central Excise, Visakhapatnam - II …..Respondent(s)**

**Appearance**
Shri Derrick Sam, Advocate for the Appellant.
Shri Pawan Kumar, Superintendent (AR) for the Respondent.

**Coram:**
**Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)**
**Hon'ble Mr. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)**

**Date of Hearing: 06/07/2018**
**Date of Decision: 24/07/2018**

**FINAL ORDER No. A/30759/2018**

**[Order per: M.V. Ravindran]**

This appeal is directed against Order-in-Appeal No. 07/2010 (V-II) Cus dated 02.08.2010.

2. Heard both sides and perused the records.

3. Brief facts of the case are that appellant exported iron ore fines of 16,500 MT declaring Fe content as 61.5% under the Shipping Bills No. SB No. 08/06.02.2008, after provisional assessment and payment of duty of Rs. 8,25,000/- @ Rs. 50/- per MT and cess of Rs. 16,500/- @ Rs. 1/- per MT subject to Test Results of samples with a bank guarantee of Rs. 41,25,000/- for the differential duty under Section 18 of the Customs Act, 1962.

3.1 The Test Report No. CL 2020-EKKD, dated 11.02.2008 of the representative samples drawn during the examination of cargo in the presence of agent of the appellants at the time of export had shown the Fe content as 62.32% consequent to which the differential duty of Rs. 250/- per MT became payable in terms of Notification No. 62/2007-Cus, dt. 03.05.2007. The Revenue encashed the bank guarantee to recoup the differential duty of Rs. 41,25,000/-.

3.2 The appellants vide letters dated 28.03.2008, 18.06.2008 and during the personal hearing on 18.06.2008 requested for re-test, as the analysis carried out by independent third party laboratory M/s Inspectorate Griffith India Private Limited showed Fe content as 60.16%. On payment of requisite fee by the appellants, the remnant sample was sent to the Central Revenues Control Laboratory, New Delhi on 28.05.2009. The Director, CRCL in his test report No. 33-Cus/C-7/2009-10, dt. 12.11.2009 informed iron ore content of the sample as 62.2%. As such, the Revenue confirmed the rate of duty at Rs. 300/- per MT and demanded interest of on differential duty of Rs. 41,25,000/-. Hence this appeal is filed.

4. Aggrieved by the above referred Order-in-Original and appeal was preferred before the First Appellate Authority. The First Appellate Authority has after following the due process of law rejected the appeal.

5. Learned Counsel appearing for the appellant draws our attention in the facts of the case. It is his submission that when the consignment was loaded, the test report showed Fe content as 60.16 %; that the report of the Deputy Chief Chemist indicated Fe content as 62.35 %. Not satisfied with the re-test of the Deputy Chief Chemist of the Test results by the CRCL 62.2% is the test on the ground that the CRCL had tested the sample all most after 22 months due to which the Fe content may have gone up from original of 60.19 %. He relies upon the following case laws:

*Bagadiya Brothers Pvt. Ltd., Vs. CC & CE, Visakhapatnam* [2010 (249) ELT 387 (Tri. – Bang.)]

*Steer Overseas Pvt. Ltd., Vs. CC & CE, Visakhapatnam* [2010 (250) ELT 308 (Tri. – Bang.)]

*Mineral Enterprises Ltd., Vs. CC, Mangalore* [2010 (253) ELT (Tri. – Bang.)]

*Alpine International Vs. CC, Mangalore* [2008 (224) ELT 331 (Tri. – Bang.)]

It is his further submission that the certificate of quality issued by reputed, authorized laboratory indicates that the Fe content of the consignment was 60.16% and also E-mail from recipient end, indicates that the Fe content was 59.35%. It is his submission that once the Fe content less than 62% the assessment finalized by the Lower Authorities were wrong confirming the demand of customs duty at an amount of Rs. 300/- per MT as applicable iron ore consignment having Fe content as more than 62.2%.

6. Learned Departmental Representative reiterates the findings of the lower authorities.

7. On careful consideration of submissions made, we find the appellant has no case on merits. It is clear from the records, the samples when tested by Deputy Chief Chemist, indicated a Fe content of 62.32 %. The re-test which was sought by the appellant by CRCL Delhi also indicated of 62.2 percent. In our view, the findings of the First Appellate Authority on this point are correct and are reproduced:

> *"**5.3** The Customs House Laboratory report dated 11.02.2008 indicated Fe content of the samples of the iron ore exported under Shipping Bill No. 08/06.02.2008 as 62.32%. The result of the re-test dt. 12.11.2009 carried out at the request of the appellant by CRCL also confirmed the Fe content as 62.2%. This result amply demonstrated that the time gap did not alter the Fe content position of the samples. The appellants were supplied with a copy of re-test result and were given an opportunity to indicate their stand. The appellants did not avail this opportunity to cross examine or to contest the result of the re-test report of CRCL during course of adjudication proceedings. Merely the appellants requested to accept the test report of*

> *M/s Inspectorate Griffith India lab which showed Fe content as 60.16%. This is not acceptable. This test was conducted for private purposes by private labs. The Re-test Report dt. 12.11.2009 of CRCL showing 62.2% of Fe content is binding on the appellants. The export duty at the rate of Rs. 300/- per MT in terms of Notification No. 62/2007-Cus, dt. 03.05.2007 is prima facie applicable for iron ore exported under Shipping Bill No. 08/06.02.2008. Any supplementary evidence is considered only in the absence of prima facie evidence. Hence appellant's contention that the transaction value realized can be taken as supplementary evidence is not tenable."*

In our view, nothing survives in this case as re-test of Fe content, is indicating Fe content as more than 62%. The case laws on which reliance was placed by the appellant, may not be carry his case any further as in this case, on the Lower Authorities had accepted the re-test request of the appellants herein and conclusion was reached thereafter.

8. In view of the foregoing, we find no merits in the appeal and the same stands rejected.

(Order pronounced on 24/07/2018 in open court)

**P. VENKATA SUBBA RAO**
**MEMBER (TECHNICAL)**

**M.V. RAVINDRAN**
**MEMBER (JUDICIAL)**

Lakshmi….