CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench
Court - I

Appeal No.	Appellant(s)	Respondent(s)	Order-in-Appeal No.
C/538/2009	CC, Vijayawada	Bharat Mines & Minerals	08/2009 (G) (D) Cus, dated 02.07.2009 passed by CCCE & ST (Appeals), Guntur

Appearance:

Shri Bhanu Kiran, Asst. Commissioner/AR for the appellant

Shri P. Rama Krishna, Advocate for the Respondent.

Coram:

HON'BLE Mr. M.V.Ravindran, MEMBER (JUDICIAL)

HON'BLE Mr. P. Venkata Subba Rao, MEMBER (TECHNICAL)

Date of Hearing: 02.08.2018
Date of Decision: 02.08.2018

FINAL ORDER No. A/31013/2018

[Order per: P.V. Subba Rao.]

1. This appeal was filed by the Revenue against Order-in-Appeal No.08/2009 (G) (D) Cus, dated 02.07.2009. Heard both sides and perused the records.

2. The brief facts of the case are that the respondent exported iron ore fines from Krishnapatnam and paid Customs Duty @ Rs.300/- per metric ton (MT). An export duty is leviable on the iron ore fines exported in bulk @ Rs.300/MT if the Fe content of the fines is over 62% and @ Rs.50/MT if the Fe content is below 62%. In this case the shipping bills declared that the iron ore fines had Fe content of 60% but they paid duty calculated @ Rs.300/MT. The shipping bills were assessed by the Assessing Officer

subject to the outcome of the chemical examiner's report. An endorsement to this effect was there on the shipping bill. After receiving chemical examiner's report, the Asst. Commissioner of Central Excise finalized the assessment and rectified the error in the shipping bill under Sec.154 of the Customs Act, 1962 and sanctioned refund of the differential duty paid by the exporter.

3. Revenue was aggrieved by this order and filed an appeal before the first appellate authority who rejected the appeal. The present appeal is against this impugned Order-in-Appeal on the grounds that the Hon'ble Supreme Court had in the case of Priya Blue Industries Vs Commissioner of Customs [2004 (172) ELT 145 (SC)] held that an order of assessment in the bill of entry or shipping bill is final and if a refund has to be claimed the order of assessment has to be challenged first. In this case, there was no endorsement on the shipping bill or the challans that the exporter was claiming a concessional rate of Rs.50/MT or that they were paying Rs.300/MT under protest and therefore, the assessment has become final. Without challenging the assessment, the assessee cannot claim refund as they did not. Learned Asst. Commissioner was wrong in sanctioning refund and the first appellate authority was wrong in upholding the same.

4. The learned counsel opposed the appeal and argued that the ratio of the case of Priya Blue Industries does not apply in this case because the assessment was done at a higher rate pending the test report which confirmed their declaration that Fe content was less than 62% and hence the assessment was finalized and the refund sanctioned.

5. The learned departmental representative reiterated the arguments made in the appeal and argued that unless the assessments of the shipping bills are challenged the exporter could not have claimed the refund. Therefore, the Asst. Commissioner has wrongly sanctioned the refund without the assessment being challenged or reviewed. It is his further submission that although the shipping bills mention the Fe content in iron ore as below 62% and the same has been reconfirmed by the chemical examiner’s test report, the duty was paid at a higher rate of Rs.300/MT by the exporters themselves and without any protest. Therefore, their assessment has become final and unless it has been challenged, they cannot be re-opened.

6. We have gone through the records of the case. It is not in dispute that the assessment was not re-opened. However, Sec.154 of the Customs Act empowers the officers to correct clerical or arithmetic mistakes in any decision or order. In this case, the duty was paid at the higher rate but the assessment was made subject to the outcome of the test reports of the chemical examiner. In fact, if the chemical examiner’s report had shown that the Fe content in the iron ore was higher than 62% then no refund would have arisen as a consequence. Thus, it can be said that the assessment was made provisionally by the assessing officer, although the word “provisionally assessed” was not mentioned on the face of the shipping bill. On the other hand, if the assessment is taken to be final, the calculation of the duty is certainly wrong because the rate of duty on iron ore with Fe content less than 62% was only Rs.50/MT and not Rs.300/MT. It was the responsibility of the assessing officer to correctly assess the export duty payable and he made a mistake. The customs officers are well within their

powers to correct these mistakes under Sec.154 of the Customs Act. The Order-in-Original clearly states that learned Asst. Commissioner amended the shipping bill in exercise of the powers conferred under Sec.154 of the Customs Act and calculates the correct rate of export duty. We therefore, find no infirmity in the order of the Asst. Commissioner or in the order of the first appellate authority upholding the Order-in-Original. The appeal filed by the revenue is liable to be rejected and we do so.

6. The appeal is rejected.

(Operative part of this order was pronounced in the open court
on conclusion of hearing)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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