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

Appeal Nos. C/660-661/2009

(Arising out of Orders-in-Appeal Nos. 06 & 07/2009 (G) (D) Cus dt. 11.05.2009 passed by Commissioner of Customs & Central Excise (Appeals), Guntur)

Commissioner of Customs and Central Excise, Guntur …..**Appellant(s)**

Vs.

M/s Muneer Enterprises …..**Respondent(s)**
M/s STCL Ltd.,

Appearance
Shri Guna Ranjan, Superintendent (AR) for the Appellant.
Shri B.G. Chidananda, 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: 21/08/2018
Date of Decision: 21/08/2018

FINAL ORDER No. A/31126-31127/2018

[Order per: M.V. Ravindran]

These two appeals are filed by the Revenue against Orders-in-Appeal Nos. 06 & 07/2009 (G) (D) Cus dt. 11.05.2009.

2. Heard both sides and perused the records.

3. The issue that falls for consideration is whether the respondents are eligible for the refund of the amount of excess export duty paid by them on export of iron ore or otherwise.

4. Respondent filed a shipping bill for export of 41.500 MTS of iron ore declaring it has having Fe content of 61.50%, pending receipt of report from the Chemical Examiner on the samples drawn from the said export consignments, the respondent discharged export duty at the rate of Rs. 300/- per MTS, though, they are required to pay duty only Rs. 50/- per MT as per Fe content declared in the shipping bill. On receipt of report of chemical examiner which indicated that Fe content is less than 62%, respondent filed a refund claim for the excess amount of export duty paid by them. The refund claim was processed by the Adjudicating Authority and ordering re-assessment under Section 154 of the Customs Act, 1962, refund was sanctioned. Aggrieved by such an order, Revenue preferred an appeal before the First Appellate Authority on the ground that the instructions contained in the Board Circular No. 24/2004-Cus dated 18.03.2004 will indicate that the refund claim is not maintainable when the exporter did not challenge the assessment order which became final and the contract entered by the respondent being contract based upon Fe content.

5. The First Appellate Authority has given a reasoned order for rejecting the appeal filed by the Revenue. Before the Tribunal also, the main plank of argument is that the shipping bill was assessed at the rate of Rs. 300/- per MTS and the said assessment was not challenged by the exporter; they are not avail the benefit of any exemption Notification No. 62/2007-Cus for discharge of export duty @ Rs. 50/- per MT.

6. On careful consideration of the submissions made, we find that both the lower authorities have correctly come to a conclusion that refunds claim filed by the respondent herein were correct and needs to be allowed. We find that the Adjudicating Authority has invoked the Provisions of Section 154 of the Customs Act, 1962 for re-assessment of the shipping bill on which proper declarations of Fe content was made and which was Rs. 61.50%. The said Fe content was confirmed by the report of chemical examiner as being 61.43%. If that be so, the exporter respondent needs to discharge the export duty only at the rate of Rs. 50/- per MT, but, he had discharged the export duty at the rate of Rs. 300/- per MTS i.e., he has paid more duty than he is supposed to. In our view, the findings of the First Appellate Authority from the impugned order in paragraph No. 10 need reproduction.

> ***"10.*** *The assessment in the instant case cannot be considered final by any stretch of imagination for the simple reason that the same was done subject to the outcome of the analysis of the samples by the Chemical Examiner. I cannot turn a blind eye to the whole exercise of drawal of samples and their analysis thereof and consider the assessment to be final and the payment of duty by the respondent in the first instance (before*

> *receipt of test report) as a voluntary payment, as is being contended by the revenue in its appeal. It totally belies my comprehension, as to how, the revenue can contend that, the assessment was final in the first instance, which contention if it were to be accepted would render the whole process of sampling and reporting farcical. This, I feel, can never be the contemplation of law. For the same reason, I have no hesitation in holding that the contention of the revenue on this account is totally baseless and devoid of any logic whatsoever. For the same reason, I find that the situation in the instant case is not akin to those to which the CBEC Circular No. 24/04-Cus dated 18.03.2004 applies. I am not convinced that the issue had reached finality at the time of filing of the shipping bill in question and payment of duty thereof. The instant case is different from a normal final assessment. In a normal final assessment nothing is contemplated, to be left for future, at the time of doing the assessment."*

7. As these are concurrent findings of the both the lower authorities, we hold that the impugned orders are correct and legal and does not require any interference.

8. The appeal stands rejected.

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

P. VENKATA SUBBA RAO
MEMBER (TECHNICAL)

M.V. RAVINDRAN
MEMBER (JUDICIAL)

Lakshmi….