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

Appeal No.	Appellant	Respondent	Impugned order No. and date
C/228/2009	CCT, Guntur GST	Ashapura Minechem Ltd.	OIA No. 03/2008 (G) (D) Cus, dt. 12.12.2008 passed by CCE&C (Appeals), Guntur
C/259/2009	CCT, Guntur GST	Stcl Limited	OIA No. 04/2008 (G) (D) Cus, dt. 31.12.2008 passed by CCE&C (Appeals), Guntur
C/289/2009	CCT, Guntur GST	Trimex Minerals Pvt. Ltd.	OIA No. 02/2009 (G) (D) Cus, dt. 30.01.2009 passed by CCE&C (Appeals), Guntur
C/290/2009	CCT, Guntur GST	Beml Midwest Ltd.	OIA No. 03/2009 (G) (D) Cus, dt. 30.01.2009 passed by CCE&C (Appeals), Guntur
C/428/2009	CCT, Guntur GST	Prathyusha Associates Shipping Pvt. Ltd.	OIA No. 04/2009 (G) (D) Cus, dt. 30.03.2009 passed by CCE&C (Appeals), Guntur

Appearance
Shri Bhanu Kiran, Superintendent/AR for the Appellant.

None for the Respondent.

Coram:
Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)

Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 08.10.2018
Date of Decision: 08.10.2018

FINAL ORDER No. A/31305-31309/2018

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

1. All the appeals raise a common question of law, hence they are being disposed of by this order together, the details are as under.

Appeal No.	Appellant	Respondent	Impugned order No. and date
C/228/2009	CCT, Guntur GST	Ashapura Minechem Ltd.	OIA No. 03/2008 (G) (D) Cus, dt. 12.12.2008
C/259/2009	CCT, Guntur GST	Stel Limited	OIA No. 04/2008 (G) (D) Cus, dt. 31.12.2008
C/289/2009	CCT, Guntur GST	Trimex Minerals Pvt. Ltd.	OIA No. 02/2009 (G) (D) Cus, dt. 30.01.2009
C/290/2009	CCT, Guntur GST	Beml Midwest Ltd.	OIA No. 03/2009 (G) (D) Cus, dt. 30.01.2009
C/428/2009	CCT, Guntur GST	Prathyusha Associates Shipping Pvt. Ltd.	OIA No. 04/2009 (G) (D) Cus, dt. 30.03.2009

2. The issue involved in all these appeals is regarding refund claims filed by the respondents herein in respect of iron ore fines exported through Krishnapatnam Port. In appeal Nos. C/289/2009, C/290/2009 and C/428/2009, refund claims were sought to be rejected by show cause notice on the ground that shipping bills filed by the appellants reached finality and since there is no appeal against such order, refund claims are not maintainable. The adjudicating authority in the impugned order, after following due process of law, allowed the claims for refund recording that he is resorting to the provisions of Section 154 of the Customs Act, 1962 for reassessment of the shipping bills and holding that the content of the consignments exported by the appellants are less than 62% Fe and they are liable to pay export duty only at the rate of Rs. 50/- per MT. Aggrieved by such an order, an appeal was preferred before the first appellate authority. The first appellate authority also came to the same conclusion.

3. In appeal Nos. C/228/2009 and C/259/2009, the adjudicating authority has held that refund claims needs to be allowed as per the Dy. Chief Chemist report on the iron ore contents of the shipment and the

assessment was done subject to outcome of such report. The first appellate authority also rejected the appeal filed by Revenue authorities.

4. The basic point of the argument of Revenue is that if the contents of consignments of iron ore exported if it is more than 62% Fe, the export duty is payable at Rs. 300/- per MT and if the Fe content is less than 62%, the export duty is Rs. 50/- per MT; undisputedly, appellant paid the export duty at Rs. 300/- per MT, but the shipping bill being finally assessed and unchallenged, the route of refund cannot be taken for challenging assessments.

5. The issue regarding the refund claims filed on the ground that the shipping bill which was assessed was not challenged on similar issue came before the Bench in the case of CCCE&ST, Guntur vs. Ashapura Minechem Limited [2018(9)TMI 764-CESTAT-Hyd.)], wherein this Bench after considering all the arguments in para 5 held as under.

> *"5. 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 (4) Appeal No: C/439/2009 first appellate authority upholding the Order-in-Original. The appeal filed by the revenue is liable to be rejected and we do so."

The above reproduced ratio squarely applies on all the appeals.

6. As regards the appeal Nos. C/228/2009 and C/259/2009, we find that the argument of Revenue in these cases against sanctioning of the refund is only on the ground that the shipping bill was not challenged. It is seen from the records that shipping bills in all these appeals were assessed with the remark that export duty is collected subject to outcome of the Dy. Chief Chemist report. Respondents in these two cases also paid the export duty at Rs. 300/- per MT and the report of the Dy. Chief Chemist clearly

indicates that Fe content was less than 62% only and the respondents are required to discharge export duty only at Rs. 50/- per MT. In our view, the adjudicating authority has correctly sanctioned the refund since the shipping bill was assessed and export duty paid subject to output of the Dy. Chief Chemist's report, has to be held as being provisional when the duty was paid and subsequently finalized which resulted in refund. In our view, orders of both the lower authorities are correct.

7. In view of the foregoing, the impugned orders in all these 05 appeals are held as correct and legal and does not require any interference.

8. Appeals stand rejected.

(Operative portion of the order pronounced in open court on conclusion of hearing)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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