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

Division Bench
Court – I

Appeal No. C/799/2011

(Arising out of Order-in-Original No. 05/2010 dated 27.12.2010 passed by CC, Visakhapatnam)

JSW Steel Ltd ….. **Appellant(s)**

Vs.

CC, Vijayawada ….. **Respondent(s)**

Appearance
Shri Vipin Jain, Advocate for the Appellant.
Shri N. Bhanu Kiran, Asst. Commissioner/AR for the Respondent.

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

Date of Hearing: 09.01.2019
Date of Decision: 09.01.2019

FINAL ORDER No. A/30060/2019

[Order per: M.V. Ravindran]

1. This appeal is directed against Order-in-Original No. 05/2010 dated 27.12.2010.

2. The relevant facts that arise for consideration, after filtering out unnecessary details are appellant imported consignment of "Black Water Soft Coking Coal" and sought clearance as 'coking coal' with nil duty incidence in terms of Notification No.21/2002-CUS dated 01.03.2002 as amended 'Sl.No.68' and the said bill of entry was taken up for scrutiny. On scrutiny of import documents filed, it was noticed that imported goods may not confirm to the description of 'coking coal' and bill of entry which was filed was assessed on second check for the exemption claimed. Samples were drawn and forwarded and the test report received from chemical

laboratory of Visakhapatnam Custom House indicated that sample is other than 'coking coal'. Coming to conclusion that description of the imported goods being different than the chemical test laboratory, show cause notice was issued for denial of exemption claimed by the appellant and demand of the duty with interest and imposition of penalties. Appellant contested the show cause notice on merits before the authorities stating that in order to arrive at a conclusion whether the coal imported is 'coking coal' or otherwise, the most important factor is Crucible Swelling Number (CSN) which in the case in hand reports as 1.50. After explaining these details, it was contended by the appellant before the lower authority that they are using corex technology for manufacturing iron and steel and in the said technology, the coal which is imported is directly infused into iron and steel manufacturing process and there is no requirement of converting coal into coking coal by using blast furnace technology. The adjudicating authority did not agree with the contentions raised and after extending opportunity of personal hearing, he confirmed the demands raised with interest and also imposed penalties.

3. Learned counsel, after giving us overall picture of the dispute involved in the case in hand, submits that corex technology is a new technology which uses coal with lower CSN as coking coal, directly into the process of manufacturing of iron and steel products; that the said technology used by the appellant does not require coal to be swelled and made as coking coal in order to infuse into the manufacturing process; the test reports indicate that the CSN of the imported consignment is 1.50 which would itself indicate that the said coal is coking coal; there is no definition of coking coal in the notification under which the exemption is claimed by the appellant. He would submit that identical issue of the very same assessee was argued

before the Tribunal in Bombay as reported at 2016 (343) ELT 717 and it was held that the coal which is imported is to be considered as eligible for exemption under Notification No. 21/2002-CUS. It is his submission that same issue cropped up before this Bench by Final Order No. A/31811-31817/2017 dated 15.11.2017 relying upon the judgment of the Tribunal in the appellant's own case and after reproducing the relevant portion has disposed of the appeals in their favour on merits. He produces the copy of the said order.

4. Learned departmental representative, on the other hand, submits that the coal which is in dispute in this appeal is not coking coal and coking coal is required for manufacturing of iron and steel. He draws our attention to 'New Iron making processes-Relevance to India by Dr. B.B. Agarwal and A.S. Mathur for R & D Centre for Iron and Steel, Steel Authority of India Ltd, Ranchi' and submits that there is restriction of non coking coal being used in the corex technology. He submits that non coking coal is imported and it cannot be used.

5. On careful consideration of the submissions made by both sides, we do find that identical issue in respect of various bills of entry were disposed of by this Bench by Final Order dated 15.11.2017 wherein the Bench reproduced almost the entire judgment of the Bombay Bench on an identical issue of the very same appellant. We find no reason to deviate from such a view already taken by the Bench.

6. As regards the reliance placed by learned departmental representative on 'New Iron making Processes – Relevance to India', we find that even the said papers indicate that in corex technology there are limitations but it never said that only coking coal has to be used. It is nobody's case that coal

imported by appellant is not non-coking coal as during the period in question, the parameters for ascertaining what is coking coal were insufficient and the coal which is imported in this appeal was answering to the specification as indicated at Notification No. 21/2002-CUS. We find that detailed findings on this issue of whether the imported coal is coking coal or otherwise is also indicated in the judgment of the Tribunal at Bombay (supra). In view of this, we find that the impugned order is unsustainable, though the judgment of the Bombay Tribunal and this Bench are in appeal before the Apex Court.

7. The impugned order is set aside and the appeal is allowed with consequential relief, if any.

(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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