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

Appeal No. C/1465/2011

(Arising out of Order-in-Appeal No. 14/2011 (V) CH dated 09.03.2011 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Visakhapatnam)

Commissioner of Customs and Service Tax, Visakhapatnam - CUS .....**Appellant(s)**

Vs.

M/s Sri Sainath Industry Private Ltd., ...**Respondent(s)**

Appearance
Shri Bhanu Kiran, Assistant Commissioner (AR) for the Revenue.
None for the Respondent.

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

Date of Hearing: 11/01/2019
Date of Decision: 11/01/2019

FINAL ORDER No. A/30097/2019

[Order per: M.V. Ravindran]

This appeal is filed by the Revenue against Order-in-Appeal No. 14/2011 (V) CH dated 09.03.2011.

2. None appeared on behalf of the respondent despite notice. On perusal of records, we find that the issue lies in a narrow compass

accordingly, the appeal is taken up for disposal even in the absence of any representation from the respondent.

3. Learned Departmental Representative, after taking us through the entire case records submits that the issue is regarding the value to be adopted for the goods exported i.e. iron ore. It is his submission that the respondent had declared an invoice price of US $ 138/- per DMT (FOB) for 61% of the Fe content for the consignment. It is the submission that contemporaneous exports made by other exports viz. Fomento (Karnataka) Mining Company Pvt. Ltd., was at the price of US $ 166 PDMT (FOB) for 63% Fe content; Essel Mining & Industries Ltd., was at the price of US $ 175 PDMT (FOB) of iron ore of 63.5% Fe content. He would submit that the Adjudicating Authority in the case in hand has worked out the value for the determination of the export consignment basing price of 166 $ Per DMT (FOB) of M/s Fomento (Karnataka) Mining Company Pvt. Ltd., and after giving adjustment for percentage Fe content in the iron ore for finally fixed/re-determined the value of the iron ore exported to US $ 155 PDMT (FOB). It is his submission that against such an order, an appeal was preferred to the first appellate authority who set aside the Order-in-Original. Hence this appeal. It is his submission that the Adjudicating Authority was correct in coming to a conclusion that the iron ore exported needs to be re-valued based upon the content of iron ore and also contemporaneous export value. He would draw our attention to the findings recorded by the Adjudicating Authority.

4. On careful consideration of submissions made, we find that the First Appellate Authority in the case in hand has considered all the arguments and in paragraph No. 5 while setting aside the Order-in-Appeal recorded the following findings:

> *" 5. I have gone through the records of the case and the submissions made by the appellants. The appellants exported 18386 M.T of 61% Fe content Iron Ore declaring invoice price of US $ 138/- per DMT (FOB). The test result of the foreign buyer indicated Fe content as 60.87%. The Adjudicating Authority rejected the declared price of US$ 138 per DMT of 61% Fe content iron ore exported, on the ground that the price declared by appellants was US$28 per DMT less compared to the price of US$166 declared by M//s Fomento (Karnataka) Mining Company Pvt. Ltd., during the material time from the port of Visakhapatnam to China destinations. While comparing the price declared by other exporters and rejecting the value declared by the appellants, the Adjudicating Authority relied on the price of US$166 for 63% Fe content Iron ore exported by M/s Fomento (Karnataka) Mining Company Pvt. Ltd. The Adjudicating Authority worked out the FOB price of impugned iron ore of 61% as US$155 adopting penalty condition provided in Clause 5(A) of the Contract dt. 20.04.2010 reducing US$3 per every percentage on double pro-rata basis. The authority basing which this strange formula was arrived at was not mentioned in the impugned order. It was very difficult to fathom the logic behind the manner in which the new FOB price was fixed. None of the export valuation rules support the valuation fixed by the Adjudicating Authority. In the absence of any proof that the appellants received the amount more than the declared price, I consider the declared FOB price of US $ 138 per DMT should be reckoned with to finalize the assessment."*

5. We find that the First Appellate Authority was correct in making the above referred observations. It is on records, in the Order-in-Original itself there have been contemporaneous exports near about same quantity of iron ore with 61% Fe content at the price of US $ 116.50 PDMT (CFR). The Adjudicating Authority curiously did not accept this price was accepted by the exporters M/s Bagadiya Brothers Pvt. Ltd., but chose to recalculate/re-determine the export value of the appellants iron ore by basing the adjustments holding 63.5% as standard Fe content and working back the value to demand additional duty from the appellant.

6. In our view, this approach of lower authority seems to be inconsistent and not in accordance with the provisions of the Customs Valuation Rules. The provisions of Customs Valuation (Determination of Value of Export Goods) Rules, 2007, provisions of Rule 4 provides for determination of export value by comparison. In the case in hand, the consignment brought in for exports was comparable with the goods which were exported by M/s Bagadiya Brothers Pvt. Ltd., in January, 2010. The exports in this case are April, 2010 which about three months from the export consignment of M/s Bagadiya Brothers Pvt. Ltd.

7. Keeping in mind, the above said factual position, we are of the view the First Appellate Authority was absolutely correct in setting aside the Order-in-Original. We do not find any reason to interfere in the impugned order which we uphold as correct and legal.

8. The impugned order is upheld and the appeal is rejected.

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

P. VENKATA SUBBA RAO
MEMBER (TECHNICAL)

M.V. RAVINDRAN
MEMBER (JUDICIAL)

Lakshmi….