CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH REGIONAL BENCH AT HYDERABAD
BENCH - DB
COURT - I

Appeal(s) Involved:

C/572/2011-DB

(Arising out of Order-in-Appeal No. 12-2010 (G) Cus dated 06/12/2010 passed by Commissioner of Central Excise & Customs, Guntur)

JSW STEEL LTD Appellant(s)

Versus

COMMISSIONER OF CUSTOMS GUNTUR Respondent(s)

Appearance:

Mr Vishal Agarwal, Adv for the Appellant.

Mr. Bhanu Kiran, A.R. for the Respondent.

CORAM:

HON'BLE Mr. M.V.Ravindran, MEMBER (JUDICIAL)
HON'BLE Mr. P. Venkata Subba Rao, MEMBER (TECHNICAL)

Date of Hearing: 06/02/2019
Date of Decision: 06/02/2019

Final Order No. A/ 30218 / 2019

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

This appeal is directed against order-in-appeal No. 12-2010 (G) Cus dated 06/12/2010.

2. The relevant facts that arise for consideration are: Appellant filed bill of entry on 22.04.2010 for the clearance of imported 'Bespoke Optimum Semi Soft Corex Coal'. Classifying the same under Chapter sub-heading

27011910 of the Customs Tariff Act 1975 claimed full exemption from payment of customs duty under Sl No 68A of Notification No. 21/2002-Cus. It was the opinion of the lower authorities that description of the coal in the corresponding Tariff Heading mentioned and the shipping bill does not match with each other. Clarification was sought, which was given after drawing the sample. The bill of entry was assessed provisionally. Appellant cleared the consignment of coal by paying the duty under protest. The adjudicating authority by an assessment order No. 3/2010 dated 05.05.2010 held that the duty paid by the importer appellant is incorrect. Against that decision, an appeal was preferred to the 1st Appellate Authority. The 1st Appellate Authority by the impugned order dated 06.12.2010 came to a conclusion that the goods are to be classified as non-coaking coal by giving reasoning that the Deputy Chief Chemist's report indicates CSN as 'zero'.

3. Learned counsel while arguing the matter and taking us through the case records submits that the 1st Appellate Authority was correct inasmuch that the report of the Deputy Chief Chemist was not given to the appellant in the 1st instance; that even if assuming that the report is there, based upon the load port report which indicates CSN as 'one', they are currently eligible for the benefit of exemption from customs duty under the Notification as this coal is used in new corex technology. He would submit that identical issue came up before the Tribunal in Mumbai in the case of the appellant as reported at 2016(343) ELT 717 (Tri-Mum)] wherein it was held that the load port report can be considered for the purpose of arriving at a conclusion as to whether the coal is coaking coal or non-coking coal. It is his further submission that the entire investigation in this case as well as the earlier cases were out of investigation initiated by DRI who found the CSN of various coal mines in one of the executive's lap tops. It is his submission

that DRI's case was, coal which is imported by the appellant which is having less than 2 as CSN cannot be considered as a coking coal, he hastens to add that this view has been now deprecated by the Tribunal; that the coal imported in the case in hand has come from optmnum coal one of the mines which was expected for quality by the appellant and which indicated CSN of the coal found there as (1). He draws our attention to paragraph No 12 of the judgement of the Tribunal as sought herein above. He would also draw our attention to pargraph No 15, as to same situation was preva;lant in that cse also as in this case.

4. Learned A.R. submits that the bills of entries which are provisionally assessed should have been finalised before the matter reached this stage. On a specific query from the Bench, learned counsel as well as departmental representative confirmed that the bills of entries are still lying provisionally assessed.

5. On a careful consideration of the submissions made, we find that since the bills of entries are assessed provisionally, this matter has to be remanded back to the adjudicating authority to finalise the bills of entry. Before sending the matter back to the adjudicating authority we deem it necessary to mention herein that the 1st Appellate Authority has relied upon the analysis report of the Deputy Chief Chemist, a copy of which was not handed over to the appellant importer. The 1st Appellate Authority could not have relied upon the said document. It is also to be noted that by relying upon the Dy Chief Chemist's report at the 1st appellate proceedings, appellant herein is deprived of his right to seek the retest of the samples, if any, in order to defend his case. Similar situation prevailed in the issue which was before the Tribunal in Mumbai Bench. On this, the Bench in paragraph No 14 has recorded as under:

> "15**.** We have held, in respect of the demands dropped by the Commissioner, that the coal imported by the appellant which is soft coking coal or mildly coking coal will get the benefit of notification which grants exemption to coking coal. As regards the 21 bills of entry in respect of which the demand has been confirmed by the Commissioner on the basis that the CSN was found to be between 0 and 0.5, the contention of the learned advocate is that the criterion of CSN one cannot be given retrospective effect. We agree with this contention as already held by the Tribunal in the appellants own case in *Commissioner of Customs* v. *JSW Steel Ltd*. - 2012 (284) E.L.T. 680 (Tri.-Chennai). The other contention is that the test reports were never furnished to the appellant till the adjudication stage. Therefore, the appellants never had the opportunity to rebut the findings of the tests. The results were communicated after many years during the course of adjudication. With the passage of time, even if it is available in adequate quantity and preserved in appropriate condition for drawing samples which is not likely, the quality of coal would have changed due to impact of weathering. The learned advocate relied on a piece of technical literature - *'Deterioration of coking coal quality, samples and stockpiles, issued by the Division of Mining Technology, CSIR South Africa'* which says that the CSN number is reported to decrease with increased degree of weathering. It has been brought on record by the appellant that the internal test reports in respect of these 21 bills of entry clearly show that the CSN was one or more than one. The ld. advocate submits that their laboratory is having ISO 9001 standards. In the circumstances we do not find any reason to disbelieve the internal reports because these reports were recovered from the records of the appellant seized by DRI. Revenue has selectively chosen to ignore these records although it has relied on other private records to suit their case. In the face of two differing reports, the obvious way out would have been to test the samples again. But this is not possible now for reasons aforesaid. At the same time we find that the Ash content, which was the only criterion in the notification as it stood during the period in dispute, was met in the case of 21 B/Es."

6. In our view, the above would have been enough for us to dispose of the appeal. However, as the bills of entry are still provisionally assessed, we find it necessary to remand the matter back to the adjudicating authority to finalise bills of entry taking on record various documents that may be produced by the appellant in support of his claim that CSN of the coal imported is acceptable, and pass a speaking order after following principles of natural justice. The adjudicating authority would also consider the ratio of various decisions in the appellant's own case in similar set of facts before coming to a conclusion.

7. The impugned order is set aside and the matter is remitted back to the adjudicating authority for *denovo* adjudication who will do so after following principles of natural justice. Appeal stands disposed of.

(Order pronounced and dictated in open court)

P. Venkata Subba Rao
MEMBER (TECHNICAL)

M.V.Ravindran
MEMBER (JUDICIAL)

Neela Reddy