

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD**

REGIONAL BENCH - COURT NO. – I

Customs Appeal No. 2636 of 2012

(Arising out of **Order-in-Appeal** No.4/2012(V) CH dated 28.06.2012 passed by
Commissioner of Customs, Central Excise & Service Tax (Appeals), Visakhapatnam)

Krishna Traders

20, Hara Chandra
Mullick Street
(Soca Bazar),
Kolkata – 700 005.

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APPELLANT

VERSUS

**Commissioner of Central Tax
Visakhapatnam– GST**

GST Commissionerate,
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

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RESPONDENT

APPEARANCE:

Shri D.V. Subba Rao, Advocate for the Appellant (Amicus Curie).

Shri A Rangadham, Authorised Representative for the Respondent.

**CORAM: HON'BLE Mr. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)**

FINAL ORDER No. A/30398/2023

Date of Hearing:07.11.2023

Date of Decision:07.11.2023

[ORDER PER: BENCH]

The Appellant is an exporter of Iron Ore Fines. The issue in dispute is whether differential customs duty of ₹4,42,049/- have been rightly demanded vide Order-in-Original, finalising the assessment of shipping bill Nos. 8800677 and 8800679 both dated 02.02.2010. Further issue is whether the price adopted for finalisation at the rate of US\$101.43 PDMT, instead of the contract value of the export goods is justified.

2. The Appellant entered into contract for sale with the buyer located in China, as per contract dated 19.11.2009 the quantity to supplied was 20,000 from Haldia Port at the rate of 62.5 USD WMT and 25,000 WMT from Vizag Port at the rate of 62.5 USD. Another contract was entered dated 01.02.2010 for supply of 7000 WMT at the rate of 82.5 from Vizag Port. The contract further provided that Fe content should be minimum 61%, moisture 10% max and physical size 10 MM max. As per the contract, the Appellant filed shipping bill both at Haldia Port and also at Vishakhapatnam port. The vessel MV DONG JIN first loaded goods at Haldia Port up to the permissible

loading limit, due to low drought and they could load a quantity of 10,924 WMT. The said quantity is supported by the bill of lading also. Thereafter the said ship MV DONG JIN sailed from Haldia to Vishakhapatnam and at Vishakhapatnam - further quantity of 15,000 WMT was loaded which is supported by another bill of lading. Thus, the total quantity loaded in the said ship MV DONG JIN is 25,924 WMT (10924+15000).

3. After the export on the basis of the quantum of goods loaded in the said ship MV DONG JIN, covering 2 bills of lading, one for loading at Haldia and other at Vishakhapatnam, the Appellant raised a consolidated commercial invoice No. 355/09-10 for 25924 WMT for US\$16,97,509. The Appellant received the remittance for the exports in due course. As per bank realisation certificate dated 01.02.2010/23.08.2010 with respect to the said invoice No. 355/09-10 dated 14.01.2009, the total amount realised is US\$16,97,509.15 or ₹ 7, 92,39,326.00/-.

4. Vishakhapatnam - Customs had at the time of passing the shipping bill, had provisionally assessed the consignment at US\$ 92/81 respectively against the declared price of 65.75 US\$ and 82.50 US\$. Further revenue deposit was also obtained for ₹1,47,611/- plus ₹3,96,265/-, thus totalling to ₹ 5,43,876/-.

5. The bill of entries were taken up for finalisation by the customs and documents were called for. The Appellant filed copy of commercial invoice, BRC, copies of certificate of quality and certificate of weight dated 11.02.2011 and the provisional assessments, for finalisation. On verification of the certificates of quality and weight, the Fe content and moisture was found to have been tested as 60.61% and 6.30% respectively. Further the estimation of Iron Ore Fines above 10 mm size was found to be 5.74%.

6. The Assistant Commissioner, as per the commercial invoice found that the amount charged is US\$ 65.75 and 82.5. Further found that the copy of commercial invoice is dated 14.01.2010, which is prior to the date of the 2 shipping bills by about 3 weeks. Further it appeared from the BRC that the Appellant exporter have also dispatched two more consignments vide shipping bill Nos. 5594216 dated 18.12.2009 and 5599313 dated 14.01.2010 through Calcutta seaport, and the total quantity of the 2 shipping bills from Calcutta are 15,000 WMT. Thus in all the total Iron Ore quantity exported under the 2 contracts under the 4 shipping bills appear to be 30,000 WMT. The BRC copy also mentions the 4 shipping bills wherein

the total quantity appear to be 30,000 WMT. Whereas the commercial invoice was only for 25,924 WMT. Though the quantity is not mentioned in the BRC but the said quantity was co-related from the shipping bills, also dispatched from Haldia and Calcutta from the e-data of the department. Further the BRC shows the right amount in several parts, without indicating specifically the exact amount realised for export of goods against each of the 4 shipping bills. Thus it appeared that commercial invoice and BRC do not give specific indication of the amount realised bill wise. Further, in view of the variation in unit price in the different shipping bills, it appeared to the Department that it does not help in identifying the correct amount realised against the 2 shipments/shipping bills through Vishakhapatnam port. It further appeared to revenue that the commercial invoice is not showing the true and correct transaction value of the goods exported, and also due to the fact that the BRC does not indicate the actual amount realised shipping bill wise, in terms of Rule 3(3) of Customs Valuation Rules, 2007 read with Section 14 of the Act, the transaction value is fit for rejection and the same is fit to be re-determined. Thereafter for determination of the export value by comparison method, as per Rule 4 of the Customs Valuation Rules, 2007 and considering some adjustments, as the goods in the nature of Ore and exact comparison with all parameters in the circumstances is not possible, the authority moved onto Rule 5 which provides for computed value method, wherein the fact such as cost of production etc., are to be considered. There after he proceed to Rule 6 which specify that where the value of export goods cannot be determined under the provisions of Rule 4 and 5, the value shall be determined using reasonable means consistent with the principles and general provisions of the rules. Thereafter, he resorted to the prices quoted in the 'Metal Bulletin' and adopted a price of 126\$ and 128\$ and after considering the deductions arrived at 101.43 US\$ and accordingly finalised the 2 shipping bills from the Vizag Port, and accordingly worked out differential duty payable ₹4,42,049/-.

7. As per the documents, it appeared that the consignment consists of lumps i.e Iron Ore Fines 10mm size and above, estimated at 5.74%, such lumps are chargeable to duty at 15%, and in consignment of Fines where lumps are mixed, tolerance of 5% only is permitted. And on any excess of this 5% of the quantity of lumps, duty at the rate of 15% is charged in terms of Public Notice No. 14/2008 dated 27.03.2008 issued by Goa Customs Commissionerate. Accordingly, after giving allowance for 5%, on

balance 0.74% of the quantity, is dutiable at the rate of 15% ad-valorem. Further observed that since 5% of duty have already been collected, the differential 10% needs to be charged on finalisation of this quantity. Accordingly, the 2 shipping bills were finalised and after adjusting the amount of revenue deposit, the differential duty is further to be paid worked out to ₹ 4,42,049/-.

8. Being aggrieved the Appellant preferred appeal before the Commissioner (Appeals) inter alia on the grounds:

- The FOB value for like goods for 'single port' export and 'two port' export, cannot be one and the same.
- International market price of any goods fluctuate. 'Iron ore fines' as per Metal Bulletin, are not of like kind and quality with that of the goods exported.
- One contract is two port export and the said contract date is much earlier than the actual date of export. The other contract is one port export and FOB price is more than the earlier contract.
- Opportunity to give clarification before finalizing assessment was not given.
- When TV is in doubt, necessary clarification must be sought from the exporter. Only when clarification is not proper, the proper officer may reject the declared value.
- The export goods were not a homogenous mixture. The test report of representative sample, cannot be taken as authentic. Additional duty on iron ore, working sheet provided to show the excess duty paid.
- The appellant assailed the rejection of the transaction value.

We also record our appreciation for the assistance provided by Shri D V Subba Rao, Advocate as amicus curie.

In this regard reliance is placed on the following case laws:

- i) Centrury Metal Recycling Pvt Ltd., Vs Union of India
[2019 (367) E L T (S.C.)]
- ii) C.C.E. & S.T., Noida Vs Sanjivani Non-Ferrous Trading Pvt Ltd.,
[2019 (365) E.L.T. 3 (S.C.)]

9. The Commissioner (Appeals) was pleased to reject the appeals upholding the finalisation order.

10. Being aggrieved the Appellant is before this Tribunal.

11. The Learned Amicus Curie, has taken us through the records, and have further urged that the impugned order is patently erroneous, as the quantity admittedly loaded on the ship is 25,924 WMT, which is not disputed. Shipping bill is filed provisionally as the cargo being Iron Ore Fine, is in the nature of bulk cargo. Admittedly the loading was first done at Haldia Port, which is a riverine port and due to lack of drought (in spite of the shipping bills filed for 15,000 WMT) the Appellant could load only 10,924 WMT. Thereafter the said ship arrived at Vishakhapatnam Port, where the Appellant could further load 15,000 WMT, comprising of 2 shipping bills. Thus, the Court below have erred in making the assessment taking the quantity exported as 30,020 WMT. It is further urged that there is no basis for rejection of the transaction value. The transaction value has been rejected whimsically, without there being any cogent reason for rejection of the same. It is further urged that at the relevant time the duty for lumps in an export consignment of Iron Ore Fines, had been reduced from 15% ad-valorem, to 10% ad-valorem, and accordingly the duty have been calculated excessively. The relevant notification being 79/2008 – Cus dated 13.06.2008, as amended by Notification No. 147/2009 – Cus dated 24.12.2009.

12. Learned AR for Revenue relies on the impugned order and further urges that as the Appellant did not produce the copy of shipping bill for the goods loaded at Haldia Port. The Customs Authority, Vishakhapatnam was in dark about the exact quantity exported by the Appellant. It is further urged that Iron Ore Fines prices keep moving in the International Market, and the customs authority as per the impugned order was aware of the higher international prices. Further such allegation of there being higher prices at the relevant time, is also supported by the metal bulletin referred to by the Adjudicating Authority. Further the Adjudicating Authority have given the allowable deductions from the prices quoted in the metal bulletin. Accordingly, he urges that the appeal is fit to be dismissed.

13. Having considered the rival contentions, we find that the transaction value have been rejected mainly on the basis of some confusion arising from the BRC, which referred to 4 shipping bills for the total quantity of 30,000

WMT. Accordingly, there was difference noted by the Customs Officer with regard to the quantity exported. According to the said invoice No. 355/2009-10 dated 14.01.2010, total quantity exported was only 25,924 WMT. We find that there is no basis except assumption and presumption for drawing adverse inference on this account. We further find that there is no evidence that the Appellant have received anything extra, higher than the invoice amount, which is supported by the BRC. We further find that the reasons given for rejecting the transaction value, is against the provisions of Section 14 of the Customs Act read with Rule 8 of the Valuation rules. Accordingly, the appeal is allowed and the impugned order is set aside. So far rejection of transaction value is concerned, we further hold that for the excess lumps the same were to be charged at 10% ad-valorem, and not 15% ad-valorem. Accordingly, the Court below is directed to re-calculate the duty payable in terms of this Order. Appeal allowed.

(Dictated and pronounced in open court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)