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

Division Bench – Court No. – I

Customs Appeal No. 1218 of 2012

(Arising out of Order-in-Appeal No. 01/2012-V II(D) Cus Dt.15.02.2012 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Visakhapatnam)

M/s Vibhutigudda Mines Pvt Ltd
Modi Bhavan, Hospet Road, Allipur,
Bellary, Karnataka – 583 104

......Appellant

VERSUS

Commissioner of Customs
Vijayawada
D.No.55-17-3, 2nd floor, C-14, Road No.2,
Industrial Estate, Vijaywada, AP – 520 007

......Respondent

Appearance:-

Shri M.S. Nagaraja, Advocate for the Appellant.
Shri A. Rangadham, Authorized Representative for the Respondent.

Coram: **HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)**
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30148/2025

Date of Hearing: 04.03.2025
Date of Decision: 30.04.2025

[Order per: ANGAD PRASAD]

M/s Vibhutigudda Mines Pvt Ltd (hereinafter referred to as the appellant) is in appeal against OIA dt.15.02.2012 passed by Commissioner (Appeals) (impugned order), whereby, the appeal filed by the Department was allowed and the OIO dt.30.06.2011 was dismissed.

2. The brief facts of the case are that the appellants had exported 16,018 WMT of Iron Ore Fines through Customs House, Kakinada under Shipping Bill dt.04.01.2010, which was provisionally assessed and they had paid export duty of Rs.28,18,207/- @ 5% along with Cess of Rs.16,018/- on

11.01.2010 at the time of export. They had submitted all the requisite documents like Export Contract, final invoice, certificate of quality at load port, Test report at discharge port, etc., for finalization of assessment by the proper officer. Thereafter, a speaking order dt.30.06.2011 was passed by the Assistant Commissioner of Customs, who finalized the assessment of Iron Ore Fines with Export duty of Rs.26,95,760/- and Cess of Rs.16,018/-. Therefore, the appellants became entitled for refund of excess duty paid amounting to Rs.1,22,447/-. The Department challenged the above speaking order dt.30.06.2011 before the Commissioner (Appeals), who vide the impugned order dt.15.02.2012, allowed the appeal filed by Department and has set aside the finalization of assessment order passed by the Adjudicating Authority. He further held that the transaction value declared by the appellants requires to be rejected under the provisions of Rule 8 of Customs Valuation (Determination of the Value of Export Goods) Rules, 2007 and that the value is to be determined by invoking the provisions of Rule 4 read with Rule 6 of the said Rules, which provides for adoption of transaction value of goods of the like kind and quality exported at or about the same time to other buyers in the same destination.

3. The appellant submits that the facts, as recorded in the Grounds of Appeal by the Department before the Commissioner (Appeals) and the impugned order are clearly contrary to facts. They further submit as follows:

a) That the proper officer has recorded that since export of Iron Ore Fines with Fe content more than 64% is restricted, the representative sample of Iron Ore Fines was being tested and accordingly, the assessment was provisional pending submission of Test Report and final documents.

b) That the Assistant Commissioner has referred to final invoice dt.18.01.2010, which clearly records Fe content of 61.02%, moisture content of 4.37% and the price of US $1164475.35 for export of 16,018 WMT of Iron Ore Fines,

c) That the final invoice contains the quantity of Iron Ore Fines, Fe and moisture content, chemical composition, adjustment of price based on the composition of Iron Ore Fines, etc.,

d) That the Assistant Commissioner has further compared the price in final invoice with the Bank Realization Certificate (BRC) dt.22.03.2010 for realization of price of US $1164475.35; and that he further recorded that there was no evidence of mis-declaration and there was no other evidence to prove that the exporter has received excess amount other than the amount realized as per BRC and final invoice. Hence he has accepted the transaction value as per section 14 of the Customs Act, 1962.

e) That it was further recorded that Assistant Commissioner has accepted moisture content of 4.37% as per test report dt.16.01.2010, which was as adopted in final invoice.

4. Learned Advocate for the appellant submits that Department in the Grounds of Appeal before the Commissioner (Appeals) has relied mainly on provisional invoice and also on the Chemical Examiner's report dt.29.01.2010, which is not admissible as the report did not refer to moisture content and also did not confirm whether Fe content of Iron Ore was tested and reported on Dry or Wet basis. This is contrary to the settled law in the judgment by Hon'ble High Court of Bombay in the case of UOI Vs Gangadhar Narsingdas Aggarwal [1988 (33) ELT 673 (Bom)] which was affirmed by Hon'ble Supreme Court, basing on which CBIC issued Circular No.4/2012-Cus dt.17.02.2012 which has directed that the assessment of Iron Ore should be based on the Fe content on WMT basis. He further submits that transaction value corroborated by sale/purchase contract and BRC cannot be rejected without substantive evidence which proves that export price was not true or genuine. He relied on the following judgments in support of this contention.

a) CCE & ST, Noida Vs Sanjivani Non-Ferrous Trading Pvt Ltd [2019 (365) ELT 3 (SC)]

b) CC, Mumbai Vs Tex Age [2016 (340) ELT 3 (SC)]

c) CC, Mumbai Vs Vishal Exports Overseas Ltd [2007 (209) ELT 331 (SC)]

d) CC, Goa Vs VGM Exports [2013 (291) ELT 572 (Tri-Mumbai)]

e) CC, Visakhapatnam Vs Rashmi Metaliks Ltd [2016 (342) ELT 458 (Tri-Hyd)]

f) Mahajan Fabrics Pvt Ltd Vs CCE, New Delhi [2017 (357) ELT 1240 (Tri-Del)]

5. Learned Advocate accordingly submits that impugned order is not proper, legal and correct on facts and in law and prays for setting aside the same and to restore and confirm the finalization of assessment order dt.30.06.2011 by allowing the appeal.

6. On the other hand, learned AR reiterates the findings given by Commissioner (Appeals). He also submits that appellant opted provisional assessment in the terms of contract with importer in which price adjustment is based on Fe content. The base price of Iron Ore at 61% is US $76 per DMT subject to radiations. The appellant has declared Fe 61%, whereas the Chemical Examiner has reported Fe content at 63.2%, which lead to doubt the truth or accuracy of the value declared for the goods by the appellant and they never contested the test report given by the Government Department and therefore, the report cannot be brushed aside on the basis of the opinion given by the private examiner.

7. Heard both sides and perused the records.

8. We find that the Department has relied on the chemical examiner's report dt.29.11.2010 given by the Customs House, Kakinada in place of report dt.16.01.2010, given by Inspectorate Griffith India Pvt Ltd, Bellary, Karnataka, which reported the Fe content at 61.02% on dry basis. Whereas, the Customs House, Kakinada reported Fe content at 63.2%.

9. Learned Advocate for the appellant argued that Test Memo dt.11.01.2010 was sent to chemical examiner, Customs House for testing as to whether the sample was Iron Ore Fines in bulk and to ascertain moisture and Fe content. The test report dt.29.01.2010 given by chemical examiner, Customs House, Kakinada which showed Fe content at 63.2% has no reference to moisture content and the report also does not confirm whether Fe content of Iron Ore was tested on dry or wet basis as during the relevant period, the Fe content was required to be determined on WMT basis.

ANNEXURE- A

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Inspectorate Griffith India Pvt. Ltd.
R-26, Industrial Estate, Dam Road
Hospet-583 203, Dist. - Bellary
Karnataka, India.
Tel : +91 8394 395 719
Fax : +91 8394 232 279
hospet@inspectorate.co.in
www.inspectorate.co.in

INSPECTORATE

CERTIFICATE NO. : C/IGI/VZG/M&M 15405/09-10/64298-A **DATE: 16.01.10**

CERTIFICATE OF QUALITY

FOR SHIPMENT PER MV BEI HAI

COMMODITY	: IRON ORE FINES
ORIGIN	: INDIA
PACKING	: IN BULK
QUANTITY	: 16018 WMT
PORT OF LOADING	: KAKINADA PORT, INDIA
PORT OF DISCHARGE	: ONE SAFE SEAPORT, CHINA
INSPECTION DATE	: 11.01.2010 TO 13.01.2010
SAMPLING	: DURING THE LOADING INTO THE VESSEL, SAMPLES WERE DRAWN AS PER IS -1405, PREPARED PROPERLY, LABELLED WITH SHIPMENT PARTICULARS AND SEALED.

ACTUAL RESULT OF THE TESTS OF CHEMICAL COMPOSITION, PHYSICAL PROPERTIES AND MOISTURE CONTENT OF CARGO SHIPPED AT LOADING PORT REPORTED BY OUR LABORATORY ARE AS UNDER

SPECIFICATIONS:

A) CHEMICAL COMPOSITIONS (ON DRY BASIS, PERCENTAGE BY WEIGHT)

FE	:	61.02 PCT
SIO2	:	4.96 PCT
AL2O3	:	3.34 PCT
P	:	0.058 PCT
S	:	0.011 PCT

INSPECTORATE GRIFFITH INDIA PVT. LTD. HOSPET

Regd. Office :Vasundhara, 3rd Floor, 2/7, Sarat Bose Road, Kolkata - 700 020, India.

For Vibhutigudda Mines Pvt. Ltd

Authorised Signatory

VIBHUTIGUDDA MINES Pvt. Ltd. BELLARY

CUSTOM HOUSE, KAKINADA.

TEST MEMO NO. 04/EXP/DWP/10

The following Sample is forwarded to ascertain whether the sample is Provide fines in Bulk or not.
TO ascertain moisture % & Fe %.
Dt- 11/01/10

1 Name of the Exporter	:	M/S. VIBHUTIGUDDA MINES PVT LTD
2 Shipping Bill No.	:	1010009 / 04.01.10
4 Name of the Vessel	:	MV. BEL HAI
3 Date of Sample Drawel	:	11/01/10

V. Ragh...

SRI NATIONAL SHIPPERS & TRADERS PVT. LTD. AS AGENTS KAKINADA

Signature of the Exporter

N. Kanthangi
Inspector of C/E
Custom House,
Kakinada.

Supdt. of C/E
Incharge
Custom House,
Kakinada.

4/1/10

Sample	Description	Results
CL-1785-EXP-KKD 21-1-10	Iron ore fines in Bulk. The sample is in the form of Brown coloured powder with small lumps. It is comprised mainly of oxides of iron with small amounts of oxides of aluminium and silicon. % Total Fe = 63.2. Sealed remnant returned.	

29/1/10

Chemical Examiner Grade
Chemical LABORATORY
CUSTOM HOUSE
KAKINADA

Fe. 63.2%

Page 1, as Dry/wet basis not stated

calculated 60.4 on WMT

ATTESTED
(N. CHAKRADHAR)
Superintendent (Appeals)
Kakinada 1 (Customs) Division
Customs House - Kakinada

10. He further relied on UOI Vs Gangadhar Narsingdas Aggarwal [1988 (33) ELT 673 (Bom)], wherein it was held as under:-

> *"4. ………… Although it is true, as submitted by Mr. Rege, that moist lumpy iron ore and moist iron ore fines have to be dried for the purpose of determining the iron contents, there is a mathematical formula by which, on the basis of the results of these aforementioned analysis, the iron content in moist lumpy iron ore and moist iron ore fines can be easily determined. That formula has been in fact explained in a letter dated 23rd June 1978 addressed by Toman Trading Co. Ltd., a copy of which is at Exh. 'A' to the petition. It appears that following this very method, Italab (Goa) Pvt. Ltd. have issued certificates as to the iron content in the moist iron ore fines and moist lumpy iron ores exported by the petitioners……"*

11. The Hon'ble Supreme Court in the case of UOI Vs Gangadhar Narsingdas Aggarwal [1997 (89) ELT 19 (SC)] has upheld the above judgment given by Hon'ble Bombay High Court and held as under:-

> *"4. ………… It is immaterial what method one adopts for the purposes of separating the iron content from the lumpy iron ore but the percentage has to be determined from the total weight which was available at the given point of time after the iron content is determined. That is because the duty is relatable to weight and, therefore, once the iron content is determined keeping in mind the total weight the percentage can be determined separating the iron content from the rest of the impurities inclusive of moisture and thereafter ascertain in which category the lumpy iron ore would fall for the purposes of charging duty under the aforesaid Notifications. This view which the learned Single Judge took and which came to be affirmed by the Division Bench of the High Court appears to us to be the correct view to take, for the reason that if the percentage of iron content is determined after ignoring the moisture the percentage would not be relatable to the lumpy iron ore weighed at the relevant point of time for the purposes of charging duty. We, therefore, do not think that the High Court committed any mistake in the view it took. Even if two views were possible the view taken by the High Court being a plausible one would not call for intervention by this Court."*

12. He further submits that based on the above judgment and law declared by Hon'ble Supreme Court, CBIC issued Circular No. 04/2012-Cus dt.17.02.2012, which directed that the assessment of Iron Ore should be based on the Fe content on WMT basis. The relevant para is extracted below:

> *"2. Hon'ble Supreme Court in the matter of Civil Appeal No. 7539 of 1995 in case of Union of India Vs Gangadhar Narsingdas Aggarwal [1997(89) ELT 19(SC)] in order to arrive at the Iron (Fe) contents out of Iron Ore, had held that-*
>
> > *'that is because the duty is relatable to weight and therefore, once the iron content is determined keeping in mind the total weight, the percentage can be determined separating the iron contents from the rest of the impurities inclusive of moisture*

and thereafter ascertain in which category the lumpy iron would fall for the purpose of charging duty....'

3. In light of the observation by the Apex Court that export duty is chargeable according to Fe contents, and to maintain uniformity all over the custom houses, it is clarified that for the purpose of charging of export duty the assessment of Iron ore for determination of Fe contents shall be made on Wet Metric Ton (WMT) basis which in other words mean deducting the weight of impurities (inclusive of moisture) out of the total weight/Gross Weight to arrive at Net Fe contents."

13. We find that the report given by Customs House, Kakinada as sought by the Department did not contain any moisture content and nowhere it is mentioned that it is tested on WMT or DMT basis, which is in contravention of norms as laid down by Hon'ble Supreme Court in the judgment supra, as also in the circular issued by CBIC. Whereas, the report given by Inspectorate Griffith India Pvt Ltd, which is authorized agency for inspection under section 7(1) of Export (Quality Control & Inspection) Act, 1963, under Export Inspection Council of India under Ministry of Commerce & Industry (GOI), has specifically mentioned moisture content while testing the sample on DMT (dry basis). Therefore, the reliance placed by Commissioner (Appeals) on the test report given by Customs House, Kakinada is misplaced as it has not tested the sample as required by law. Hence the findings given by Commissioner (Appeals) on basis of report dt.29.01.2010 given by Customs House, Kakinada is not tenable.

14. Learned Advocate further relied on section 14(1) of the Customs Act, 1962 which is the basis for determining the value of goods and the same is reproduced below for ease of reference:

"Section 14. Valuation of goods – (1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf"

15. He further submits that the transaction value/invoice price corroborated by sale/purchase contract and BRC cannot be rejected without substantive evidence that the export price was not true or genuine. He placed reliance on the following judgments in support of this contention.

a) CCE & ST, Noida Vs Sanjivani Non-Ferrous Trading Pvt Ltd [2019 (365) ELT 3 (SC)]. The relevant para is extracted below:

"10) The law, thus, is clear. As per Sections 14(1) and 14(1-A), the value of any goods chargeable to ad valorem duty is deemed to be the price as referred to in that provision. Section 14(1) is a deeming provision as it talks of 'deemed value' of such goods. Therefore, normally, the Assessing Officer is supposed to act on the basis of price which is actually paid and treat the same as assessable value/transaction value of the goods. This, ordinarily, is the course of action which needs to be followed by the Assessing Officer. This principle of arriving at transaction 2(2007) 6 SCC 373 3(2010) 10 SCC 576 4(2012) 1 SCC 186 value to be the assessable value applies. That is also the effect of Rule 3(1) and Rule 4 (1) of the Customs Valuation Rules, namely, the adjudicating authority is bound to accept price actually paid or payable for goods as the transaction value. Exceptions are, however, carved out and enumerated in Rule 4(2). As per that provision, the transaction value mentioned in the Bills of Entry can be discarded in case it is found that there are any imports of identical goods or similar goods at a higher price at around the same time or if the buyers and sellers are related to each other. In order to invoke such a provision it is incumbent upon the Assessing Officer to give reasons as to why the transaction value declared in the Bills of Entry was being rejected; to establish that the price is not the sole consideration; and to give the reasons supported by material on the basis of which the Assessing Officer arrives at his own assessable value."

b) CC, Goa Vs VGM Exports [2013 (291) ELT 572 (Tri-Mumbai)]. The relevant para is extracted below:

"6.1 Section 14 of the Customs Act, 1962 stipulates that for the purpose of the Customs Tariff Act, the value of the exported goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale.

6.2 It is not the case of the department that the buyer and seller are related. It is also not a case of the department that the respondent has realized any amount more than what is indicated in the final invoice price, which has been received by them through the Bank. In other words, the price actually paid for the goods exported was the price realized by them as per the final invoice and as per the Bank certificate and that is the transaction value on which duty liability has to be discharged."

c) CC, Visakhapatnam Vs Rashmi Metaliks Ltd [2016 (342) ELT 458 (Tri-Hyd)]. The relevant para is reproduced below:

"4. We find that the grounds raised by the department have been taken cognizance of by the Commissioner (Appeals) and the order passed by him is well reasoned. When the department accepts the BRC, as well as the final invoice of the exporter and has no doubt or dispute that amount other than what was reflected in final invoice was not received by the latter, the BRC has to be given credibility and reliance. This being so we do not find any infirmity in the impugned order. The appeal of department therefore requires to be dismissed, which we hereby do."

d) Mahajan Fabrics Pvt Ltd Vs CCE, New Delhi [2017 (357) ELT 1240 (Tri-Del)]. The relevant para is reproduced below:

"10. …… it is seen that the customer in the foreign country has accepted the declared value of the export goods and have also paid the declared amount to the appellant. There is nothing on record to indicate any other extraneous consideration. It is settled law that transaction value between the importer and exporter is required to be accepted normally. The conditions under which such transaction value can be rejected is also mentioned in the Customs Valuation Rules 2007. These rules also indicate the procedure for re-determination of the value in the case transaction value is to be rejected. In the present case we are of the view that there are no valid reasons for rejection of the transaction value…"

16. The Commissioner (Appeals) has also not referred to any material evidence for substantiating any additional consideration received by the exporter over and above the Invoice Price for rejection of the transaction value. Whereas, the Assistant Commissioner has correctly finalized the assessment in terms of Final Invoice dt.23.12.2009 based on Fe content of 61.02% as per the Test Report at the load port and realization of the price confirmed by the BRC in terms section 14 ibid as per the terms of the sale contract. The Order of the Commissioner (Appeals) is based on the Test Report dt.29.01.2010, which is not according to the CBIC circular and the decision of Hon'ble Supreme Court in the case of Gangadhar Narsingdas Aggarwal.

17. In view of the above, the impugned order of the Commissioner (Appeals) is not proper, legal and correct in the facts of the case and therefore, liable to be set aside.

18. Accordingly, the impugned order is set aside and the appeal is allowed with consequential relief.

(Pronounced in the Open Court on 30.04.2025)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

Veda