

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

REGIONAL BENCH - COURT NO. – I

Customs Appeal No. 25590 of 2013(Arising out of **Order-in-Appeal** No.101/2012-VCH dated 21.11.2012 passed by
Commissioner of Customs, Central Excise & Service Tax (Appeals), Visakhapatnam)

Commissioner of Customs Visakhapatnam-Customs Port Area, Visakhapatnam Andhra Pradesh – 530 035	..	APPELLANT
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VERSUS

M/s Arihant Tiles & Marbles Pvt Ltd NH-8, Amberi, Badgaon PO, Udaipur, Rajasthan – 313 011	..	RESPONDENT
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WITH

Customs Appeal No. 25591 of 2013(Arising out of **Order-in-Appeal** No.100/2012-VCH dated 21.11.2012 passed by
Commissioner of Customs, Central Excise & Service Tax (Appeals), Visakhapatnam)

Commissioner of Customs Visakhapatnam-Customs Port Area, Visakhapatnam Andhra Pradesh – 530 035	..	APPELLANT
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VERSUS

M/s Arihant Tiles & Marbles Pvt Ltd NH-8, Amberi, Badgaon PO, Udaipur, Rajasthan – 313 011	..	RESPONDENT
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WITH

Customs Appeal No. 25592 of 2013(Arising out of **Order-in-Appeal** No.99/2012-VCH dated 21.11.2012 passed by
Commissioner of Customs, Central Excise & Service Tax (Appeals), Visakhapatnam)

Commissioner of Customs Visakhapatnam-Customs Port Area, Visakhapatnam Andhra Pradesh – 530 035	..	APPELLANT
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VERSUS

M/s Arihant Tiles & Marbles Pvt Ltd NH-8, Amberi, Badgaon PO, Udaipur, Rajasthan – 313 011	..	RESPONDENT
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WITH

Customs Appeal No. 25658 of 2013

(Arising out of **Order-in-Appeal** No.102/2012-VCH dated 21.11.2012 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Visakhapatnam)

M/s Arihant Tiles & Marbles Pvt Ltd .. **APPELLANT**
 NH8, Amberi, Badgaon PO,
 Udaipur, Rajasthan – 313 011

VERSUS

Commissioner of Customs .. **RESPONDENT**
Visakhapatnam-Customs
 Port Area, Visakhapatnam,
 Andhra Pradesh – 530 035

WITH

Customs Appeal No. 25668 of 2013

(Arising out of **Order-in-Appeal** No.99/2012-VCH dated 21.11.2012 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Visakhapatnam)

M/s Arihant Tiles & Marbles Pvt Ltd .. **APPELLANT**
 NH8, Amberi, Badgaon PO,
 Udaipur, Rajasthan – 313 011

VERSUS

Commissioner of Customs .. **RESPONDENT**
Visakhapatnam-Customs
 Port Area, Visakhapatnam,
 Andhra Pradesh – 530 035

WITH

Customs Appeal No. 22068 of 2015

(Arising out of **Order-in-Original** No.VJD-CUSTM-PRV-COM-011-15-16 dated 28.06.2015 passed by Commissioner of Customs, Vijayawada)

M/s Arihant Tiles & Marbles Pvt Ltd .. **APPELLANT**
 NH8, Amberi, Badgaon PO,
 Udaipur, Rajasthan – 313 011

VERSUS

Commissioner of Customs .. **RESPONDENT**
(Preventive) Vijayawada
 D.No.55-17-3, 2nd Floor, C-14, Road No.2,
 Industrial Estate, Vijayawada, AP – 520 007

WITH

Customs Appeal No. 22100 of 2014(Arising out of **Order-in-Appeal** No.40/2014-VCH dated 24.03.2014 passed by
Commissioner of Customs, Central Excise & Service Tax (Appeals), Visakhapatnam)

M/s Essel Mining & Industries Ltd	..	APPELLANT
Industry House, 18 th Floor, 10, Camac Street, Kolkata – 700 017		

VERSUS

Commissioner of Customs Visakhapatnam-Customs	..	RESPONDENT
Port Area, Visakhapatnam, Andhra Pradesh – 530 035		

WITH

Customs Appeal No. 22101 of 2014(Arising out of **Order-in-Appeal** No.41/2014-VCH dated 24.03.2014 passed by
Commissioner of Customs, Central Excise & Service Tax (Appeals), Visakhapatnam)

M/s Essel Mining & Industries Ltd	..	APPELLANT
Industry House, 18 th Floor, 10, Camac Street, Kolkata – 700 017		

VERSUS

Commissioner of Customs Visakhapatnam-Customs	..	RESPONDENT
Port Area, Visakhapatnam, Andhra Pradesh – 530 035		

WITH

Customs Appeal No. 22256 of 2014(Arising out of **Order-in-Appeal** No.43/2014-VCH dated 03.04.2014 passed by
Commissioner of Customs, Central Excise & Service Tax (Appeals), Visakhapatnam)

M/s Essel Mining & Industries Ltd	..	APPELLANT
Industry House, 18 th Floor, 10, Camac Street, Kolkata – 700 017		

VERSUS

Commissioner of Customs Visakhapatnam-Customs	..	RESPONDENT
Port Area, Visakhapatnam, Andhra Pradesh – 530 035		

WITH

Customs Appeal No. 22619 of 2014

(Arising out of **Order-in-Appeal** No.53, 54 & 55/2014-VCH dated 30.04.2014 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Visakhapatnam)

M/s Atha Mines Pvt Ltd .. **APPELLANT**
 91A/1, Park Street, Avani Signature,
 6th Floor, Kolkata – 700 016

VERSUS

Commissioner of Customs .. **RESPONDENT**
Visakhapatnam-Customs
 Port Area, Visakhapatnam,
 Andhra Pradesh-530 035

WITH

Customs Appeal No. 20905 of 2015

(Arising out of **Order-in-Appeal** No.183/2014-15-VCH dated 19.01.2015 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Visakhapatnam)

M/s Atha Mines Pvt Ltd .. **APPELLANT**
 91A/1, Park Street, Avani Signature,
 6th Floor, Kolkata – 700 016

VERSUS

Commissioner of Customs .. **RESPONDENT**
Visakhapatnam-Customs
 Port Area, Visakhapatnam,
 Andhra Pradesh-530 035

WITH

Customs Appeal No. 20177 of 2015

(Arising out of **Order-in-Appeal** No.139/2014-VCH dated 30.10.2014 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Visakhapatnam)

M/s Khatau Narbheram & Co. .. **APPELLANT**
 PO: Barbil, Opp. Cinema Hall Keonjhar,
 Odisha – 758 035

VERSUS

Commissioner of Customs .. **RESPONDENT**
Visakhapatnam-Customs
 Port Area, Visakhapatnam,
 Andhra Pradesh – 530 035

WITH

Customs Appeal No. 20927 of 2015

(Arising out of **Order-in-Appeal** No.189/2014-15-VCH dated 30.10.2014 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Visakhapatnam)

M/s Khatau Narbheram & Co. .. **APPELLANT**
 PO: Barbil, Opp. Cinema Hall Keonjhar,
 Odisha – 758 035

VERSUS

Commissioner of Customs .. **RESPONDENT**
Visakhapatnam-Customs
 Port Area, Visakhapatnam,
 Andhra Pradesh – 530 035

WITH

Customs Appeal No. 21457 of 2015

(Arising out of **Order-in-Appeal** No.218/2014-15-VCH dated 24.03.2015 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Visakhapatnam)

M/s Mahalakshmi & Company .. **APPELLANT**
 Industry House, 18th Floor, 10,
 Camac Street, Kolkata – 700 017

VERSUS

Commissioner of Customs .. **RESPONDENT**
Visakhapatnam-Customs
 Port Area, Visakhapatnam,
 Andhra Pradesh – 530 035

WITH

Customs Appeal No. 30378 of 2016

(Arising out of **Order-in-Appeal** No.54/2015-(V.II) Cus dated 23.02.2016 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Visakhapatnam)

M/s Essel Mining & Industries Ltd .. **APPELLANT**
 Industry House, 18th Floor, 10,
 Camac Street, Kolkata – 700 017

VERSUS

Commissioner of Customs .. **RESPONDENT**
Visakhapatnam-Customs
 Port Area, Visakhapatnam,
 Andhra Pradesh – 530 035

AND

Customs Appeal No. 30379 of 2016

(Arising out of **Order-in-Appeal** No.53/2015-VCH dated 23.02.2016 passed by
 Commissioner of Customs, Central Excise & Service Tax (Appeals), Visakhapatnam)

M/s Essel Mining & Industries Ltd .. **APPELLANT**
 Industry House, 18th Floor, 10,
 Camac Street, Kolkata – 700 017

VERSUS

Commissioner of Customs .. **RESPONDENT**
Visakhapatnam-Customs
 Port Area, Visakhapatnam,
 Andhra Pradesh – 530 035

Appearance:

Shri Akhilesh Kangsia, Ms. Apoorva Parihar & Ms. Nanditha Reddy, Advocates for
 the Appellants/Assessees.

Shri K. Raji Reddy, Shri M. Anukathir Surya & Shri B. Subhas Chandra Bose, ARs
 for the Respondent/Department.

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

FINAL ORDER No. A/30491-30506/2025

Date of Hearing: 09.09.2025
 Date of Decision: 21.11.2025

[Order per: A.K. JYOTISHI]

In all these appeals, different appellants/exporters, who were engaged
 in the export of iron ore, have come in appeal either in respect of rejection
 of their refund claims in full or part on finalization of provisional assessment
 or in view of demand made for payment of additional duty as a consequence
 to finalization. Since most of these appellants have common issue and even
 the learned Advocates appearing for them have common arguments, we
 propose to take up these appeals together, as under:

(A) M/s Arihant Tiles & Marbles Pvt Ltd - Appeal Nos. C/25590–25592, 25658, 25668/2013 & C/22068/2015 :-

2. M/s Arihant Tiles & Marbles Pvt Ltd (hereinafter referred to as Appellants) have come in appeal against the order of Commissioner (Appeals) upholding the decision of Original Authority. The department has also come in appeal against setting aside of the Order of the Original Authority by the Commissioner (Appeals) in 3 appeals viz., C/25590-25592/2013.

3. The Appellants are in appeal (i.e., C/25658 & 25668/2013) on the grounds that the department has reclassified smaller quantity of Iron Ore fines as Iron Ore lumps under tariff item 2601 11 10 on the ground that export consignments contained certain Iron ore particles of size 10 mm in excess of 5% tolerance. In addition, in Appeal No.C/22068/2015, apart from on merit, appellants are also contesting the issuance of SCN invoking extended period. Learned Advocates have submitted that the issue is already settled by the Tribunal in the following cases

a) Daksh Minerals Vs CCT [2024 (5) TMI 1155 – CESTAT Hyd]

b) Atha Mines, Khatau Narbheram & Co. Vs CC, Visakhapatnam [Final Order No. A/30246-30249/2025 dt.28.07.2025]

4. They have further submitted that during the export period, the duty was on *Ad valorem* basis and not on any specific weight or quantity, therefore, moisture percentage is irrelevant for determination of duty and they have also relied on Circular No.12/2014-Cus dt.17.11.2014 clarifying that the value shall be determined on the basis of test report at discharge port. Insofar as the issue of redetermination of value of exported Iron Ore fines citing CRCL report on moisture content, which is different from the CIQ report at the discharge port, is concerned, they have mainly submitted that exports have taken place in terms of contract on mutually agreed terms and conditions, wherein, there is, inter alia, provision that the final invoice will be issues on the basis of test report of discharge port and which also provides for tolerance limit up to 10% for the moisture. They have also highlighted the fact that there has been no dispute raised as regards final invoice and the amount realized as per BRC and therefore, BRC reflected the true transaction value and there is no other allegation of receipt of extra payment, directly or indirectly. Further, in support of this, they have relied

on the judgment of this Tribunal in the case of Bonai Industrial Co. Pvt Ltd, Rungta Mines, Feegrade & Co. Pvt Ltd & Others Vs CC, Visakhapatnam [Final Order No. A/30317-30324/2024 dt.21.06.2024], wherein, it has been held that moisture content has to be taken in terms of the contract between the parties, which provides for test report at discharge port and on the basis of the same, the final invoice is issued. Moreover, it has been also held that moisture percentage is irrelevant for export duty when the duty is being charged on *Ad valorem* basis and not on specific weight or quantity. They are also relying on the judgment of Coordinate Bench at Kolkata in the case of CC (Port), Kolkata Vs Sesa Goa Ltd [2014 (307) ELT 385 (Tri-Kolkata)].

5. Insofar as the departmental appeals are concerned, where the department has come against the rejection of redetermined transaction value based on contemporaneous exports, learned Advocates' main submission is that the transaction value declared in terms of section 14 of the Customs Act, 1962 cannot be disregarded in the absence of any evidence doubting the genuineness of the transaction. Therefore, the assessing officer is required to accept the price declared by the exporter and only when the transaction value is to be rejected based on import of identical goods or similar goods at higher price at around same time, it would be necessary for the assessing officer to give reasons or demonstrate as to why the declared transaction value was being rejected. No such reasons were given by assessing officer before rejecting transaction value and redetermining the value in terms of Valuation Rules. They have relied on the following judgments:

- a) Daksh Minerals Vs CCT [2024 (5) TMI 1155 – CESTAT Hyd]
- b) Atha Mines, Khatau Narbheram & Co. Vs CC, Visakhapatnam [Final Order No. A/30246-30249/2025 dt.28.07.2025]
- c) Eicher Tractors Vs CC [2000 (122) ELT 321 (SC)]
- d) BTM Exports, Rungta Sons Vs CC, Visakhapatnam [2017 (11) TMI 1530 – CESTAT Hyd]
- e) Devika Trading Pvt Ltd Vs CC, Mumbai [2004 (167) ELT 75 (Tri-Mum)]

6. They have further submitted that the transaction value cannot be rejected merely because similar goods were exported by others at higher prices in support of which they have relied on the following judgments:

- a) KR Srilaxmi Deal Vs CC [2017 (348) ELT 489 (Tri-Kol)]
- b) Bayer India Ltd Vs CCE [2006 (198) ELT 240] – affirmed by Hon'ble Supreme Court in CCE Vs Bayer Crop [2015 (324) ELT 17 (SC)]
- c) Devika Trading Pvt Ltd Vs CC, Mumbai [2004 (167) ELT 75 (Tri-Mum)]
- d) Rashesh & Co. Vs CC [2008 (227) ELT 573]

7. They have also relied on the judgment of Bonai Industrial Co. Pvt Ltd, Rungta Mines, Feegrade & Co. Pvt Ltd & Others Vs CC, Visakhapatnam (supra) in support that when there is a contract between parties and the final invoice has been issued based on discharge port test report for Fe content as well as moisture percentage and the exporters have received payment as per final invoice duly supported by BRC, which is not disputed, the Tribunal has held that the application of CRCL test report for redetermining the value is not correct, especially when the export duty itself is on *Ad valorem* basis. Additionally, they have also contested that the department has applied the contemporaneous price without providing the appellant an opportunity to substantiate their declared value and were not provided any copy of the documents pertaining to said contemporaneous exports to support that they were similar or identical in respect to the exported goods of appellant and therefore, said redetermination is highly arbitrary and not as per law. Their reliance on contemporaneous price would also not sustain as such data and details do not mention the quantity of goods exported or destination or the grade of Iron Ore.

8. In respect of Appeal No. C/22068/2015, where apart from the issue of reclassification of Iron Ore fines as Iron Ore lumps, redetermination of declared value of exported goods due to change in moisture content is also involved.

9. On the other hand, learned AR is supporting the appeals filed by the department against the Order of the Commissioner (Appeals), whereby, the Commissioner (Appeals) has set aside the Order of the Original Authority redetermining the export value while computing the refund amount admissible consequent upon finalization of shipping bills. While doing so, the Original Authority has taken the value as 180 USD PDMT, as against declared rate of 165 USD PDMT.

(B) Essel Mining & Industries Ltd – Appeal Nos. C/22100, 22101 & 22256/2014 & C/30378 & 30379/2016:-

10. In these appeals also, learned Advocates have reiterated the submissions made in the case of M/s Arihant Tiles & Marbles Pvt Ltd, as above. Additionally, in these appeals, the issue of determination of FOB value on cum-duty or otherwise is also involved. They have fairly conceded that the issue is now no longer unsettled and has been decided in the following judgments and they are not contesting the same, as such.

- a) M/s Sesa Goa Ltd Vs CCE, C & ST, Bhubhaneswar [2014 (4) TMI 658 – CESTAT Kolkata]
- b) Mahalakshmi and Company Vs CC, Visakhapatnam – CUS [Final Order No. A/30318/2025 dt.21.08.2025]

11. Further, in Appeal No. C/22101/2014, apart from the issues involved, as cited supra, there is issue of wrong application of rate of exchange, which should have been as per the rate of exchange notified on the date of presentation of shipping bill in terms of third proviso to section 14 of the Customs Act, 1962.

(C) M/s Atha Mines Ltd – Appeal Nos. C/22619/2014 & C/20905/2015:-

12. In these appeals also, the issues are similar to the above appeals and the learned Advocates have also reiterated the submissions made in the case of M/s Arihant Tiles & Marbles Pvt Ltd, as above.

(D) M/s Khatau Narbheram & Co. – Appeal Nos. C/20177 & 20927/2015:-

13. In these appeals also, the issues are similar to the above appeals and the learned Advocates have reiterated the submissions made in the case of M/s Arihant Tiles & Marbles Pvt Ltd, as above.

(E) M/s Mahalakshmi & Co. – Appeal No. C/21457/2015:-

14. In this appeal also, the issues are similar to the above appeals and the learned Advocates have reiterated the submissions made in the case of M/s Arihant Tiles & Marbles Pvt Ltd, as above.

Department's submissions:

15. Learned ARs have primarily submitted that contemporaneous price adoption by the Authority is correct and once the department discharges the

burden of proof that the price declared is not correct, it is for the exporter to establish that the invoice relied upon by him is valid. They have relied on the provisions of the Customs Valuation (Determination of Price of Export Goods) Rules, 2007 and especially Rule 8 and also on Circular No. 04/2012-Cus dt.17.02.2012, wherein, the observations made by Hon'ble Supreme Court in the matter of UOI Vs Gangadhar Narsingdas Aggarwal [1997 (89) ELT 19 (SC)] was relied upon to clarify that for the purpose of charging export duty, the assessment of Iron Ore for determination of Fe content shall be made on 'wet metric ton'. Further, insofar as the reliance placed by the appellants on Board Circular No. 12/2012 dt.17.11.2014, they have submitted that the said circular only clarified that upon receipt of load port test report and discharge port test report, the proper officer is required to compare the two reports within the terms set out in the contract and where the variations in the two test reports are within tolerance limits provided in the contract and do not impinge upon the declared price, the proper officer may proceed to finalize the provisionally assessed shipping bills in terms of the provisions of section 14 and the Customs Valuation (Determination of Value of Export Goods) Rules, 2007. However, where the test report show a variation, so as to impinge upon the price, the proper officer is required to redetermine the value of goods in terms of Customs Valuation (Determination of Value of Export Goods) Rules, 2007.

16. Heard both sides and perused the records.

17. Before we proceed to decide the issues involved, we find that some of the admitted positions, common to all the appeals, are that the exporters had declared certain prices on per MT basis at the time of export and subsequently, they filed the final invoice along with BRC for finalization of shipping bills. Based on the documents furnished by the appellants/exporters, the department finalized the SBs and as a consequence, granted them refunds either in view of excess payment made at the time of export in respect of provisionally assessed shipping bills or demanded/adjusted duty short paid. The appellants are aggrieved that the said calculation of refunds or demand is based on wrong redetermination of value of export. We find that this wrong calculation of refund amount consequent upon finalization of shipping bills is arising out on account of various factors. For the ease of reference, the common issues involved are indicated below:

- A. Application of higher rate of duty by treating certain quantity of exported Iron Ore fines as Iron Ore lumps, attracting higher duty.
- B. Redetermination of export duty on the basis of the Fe content and moisture percentage as determined by CRCL at the time of export instead of as determined by CIQ at discharge port.
- C. Redetermination of export value by resorting to Customs Valuation (Determination of Price of Export Goods) Rules, 2007 rejecting the declared export value as true transaction value and adopting contemporaneous price without following the prescribed procedure or giving opportunity to rebut the same.
- D. Denial of cum-duty benefit on FOB value for computation of value for charging export duty.

18. Insofar as issue (A) is concerned, we find that these export consignments were having certain percentage of Iron Ore lumps also and thus, were mixture of both Iron Ore fines and Iron Ore lumps. Admittedly, the percentage of lumps determined on the sample basis by either CRCL or CIQ report is also not very high so as to make lumps as predominant component of mixed ore. We find that this issue has been discussed in detail by the Tribunal in the case of Daksh Minerals Vs CCT (supra) and Atha Mines, Khatau Narbheram & Co. Vs CC, Visakhapatnam (supra). The relevant paras in the latter case are cited below for ease of reference.

"14. We also find that there cannot be any justification for charging higher rate of duty on iron ore lump in excess of 5% in each consignment when admittedly they were part of the same bulk iron ore which was predominantly iron ore fine. We note that the lump contents are varying from 9.26% to 10.38%.

15. We find that the similar issue was for consideration before the Tribunal in the case of Daksh Minerals Vs CCT [2024 (5) TMI 1155 (CESTAT-Hyd)] wherein, it was held that consignment of iron ore fine having certain percentage of iron ore lumps also has to be treated as iron ore fines only and cannot be artificially segregated into iron ore fines and lumps for the purpose of levying export duty. The relevant para is cited below for ease of reference:

"6. Therefore, in the facts of the case, the entire consignment of mixture having certain percentage of Iron Ore lumps has to be treated as Iron Ore fines only and cannot be artificially segregated into Iron Ore fines and lumps for the purpose of levying of export duty. Therefore, the demand confirmed and upheld by the Commissioner (Appeals) is not sustainable on this ground. In so far as redetermination of value is concerned, while the department has argued that exporter has not contested the same, the learned Advocate has contested that lower authorities have disregarded the transaction value or the price of Iron Ore exported as is evident

from the invoices and corroborated by bank realization certificate dt.07.02.2011. They have also relied on certain Board Circulars viz., No. 18/2008-CUS dt.11.10.2008 and No. 37/2007 dt.09.10.2007, which have clarified that transaction value is the primary basis for valuation of export goods and the method specified under Rule 3 will be applicable. Only in the case where transaction value is not accepted, the valuation of export goods shall be done by application of Rule 4 to Rule 6. They have also relied on the judgment in the case of CC (Exports), Goa vs VGM Exports [2013 (291) ELT 572 (Tri-Mum)], wherein it has been held that the price realized by them as per final invoice and as per bank realization certificate and that it is the transaction value on which duty liability has to be discharged. We find that there is no sufficient ground for rejecting the transaction value. It is an admitted position that the price negotiated is based on certain parameters like moisture content, Fe content, etc., at the end of buyer's port and therefore, the final invoice may be higher or lower as compared to the provisional invoice. Based on the confirmed parameter verified at the receiver's port, final invoice has been raised for the consignments in question and the same amount has been realized as confirmed by BRC and accordingly, the transaction value has to be accepted in the instant case. Therefore, on this count also, there is no ground for rejecting the transaction value as also for demanding additional duty on this account."

16. We also take note of the fact that in terms of the contract between appellant and the foreign buyer there was a penalty clause for having iron ore lump (iron ore above 10mm) in excess of 10% and the penalty has also been imposed and the same was deducted from the consideration. Therefore, when the contract itself provided for tolerance waiver upto 10% there is no reason for Department not to accept the same.

17. Therefore, we find that in the present case, in view of the judgment cited supra, the rate of duty on the entire consignment is required to be at the rate at which the iron ore fines were subjected to export duty and there cannot be any artificial segregation of iron ore lump and iron ore fine in a composite mixture for the purpose of levying export duty. Further, in so far as the application of the contemporaneous FOB value for the redetermination of the export FOB, we find that it suffers from various infirmities in terms of statutory provisions cited supra, as also the fact that there is no allegation that the exporter has received any amount over and above than what has been realised by them in terms of BRC and the commercial invoices and therefore the duty should have been demanded only in terms of the amount actually realised. We note that there is no evidence that they have received anything extra over and above the amount realised and admittedly the correct duty had been discharged on said value except to the extent of applying high rate of duty for certain amount of iron ore lump, which we have already said is not correct."

19. Therefore, we hold that there cannot be an applicability of higher rate of duty by treating exported Iron Ore fines as Iron Ore lumps in the given factual matrix of the case.

20. Insofar as the issue (B) & (C) are concerned, we find that it is now settled position that wherever there is a contract, which provides for final determination of export value based on the Fe content as also moisture

percentage, the Fe content and the moisture percentage determined at discharge port has to be taken into account based on which final invoice is issued and the amount is realized. In all these cases, there is a contract, which provides for determination of Fe content as well as moisture percentage at discharge port and also the final price to be worked out based on these two parameters including permissible tolerance and applicability of bonus/penalty etc. There is no dispute that the assessments were not kept provisional and neither exporter nor the department had considered the said declared price at the time of export as final price. There is also no dispute that the appellants/exporters have realized any amount over and above what has been declared in the final invoice, as evidenced by the respective BRCs submitted by them. Therefore, when there is no major deviation in terms of parameters and they being within tolerance limit or accepted norms as agreed upon by both the sides in terms of contracts, the department could not have rejected the transaction value declared by the appellants/exporters at the time of final assessment and adopted contemporaneous price and worked out the refund based on said redetermined value. It is also noted that the procedure adopted for rejection of declared transaction value and adoption of contemporaneous price has not been followed strictly by explaining to the appellants/exporters about the basis and applicability of contemporaneous price or the reasons for rejecting the transaction value. Therefore, we find much force in the reliance placed by the appellants in various case laws, cited supra, including that of Essel Mining & Industries Ltd Vs CC [Final Order No. 77197/2025 dt.05.08.2025]. The relevant paras are cited below for ease of reference:

"9. We have gone through the records placed before us. From the impugned order, we find that the Ld. Commissioner (Appeals) has made the following observations: -

"12. Before export of the above Iron Ore Fines, the Fe content was 60.13% as certified by the Joint/Deputy Director of Mines, Govt. of Odisha and the pre-shipment report issued by M/s Mitra S.K. Pvt. Ltd. was 60.5% and basing on the above report the exported Iron Ore Fines attract 30% of Customs duty on exported value which was paid by the exporter in terms of 2nd Schedule of the Customs Tariff Act, 1975. The samples were tested at CRCL, Kolkata where the Fe content was reported to be 61.1%. Whereas, the discharge port analysis report showed the Fe content as 58.17%. 13. The adjudicating authority on the basis of discharge port analysis report, Bank Relation Certificate (BRC), and CBIC Circular No. 12/2014Cus dated 17.11.2014 finalized the shipping Bill, resulting in excess payment of duty amounting to Rs. 1,73,55,343/- which was ordered to be refunded to the exporter. On scrutiny of records it is

ascertained that the three reports i.e report of the Mines department, Load Port and CRCL, Kolkata showed confirming and non-contradicting test results, thereby establishing the fact that all the test results, at load port shows iron ore content above 60%. However, the adjudicating authority has ignored all the above 3 (three) test reports and finalized the assessment on the basis of discharge port test report and sanctioned refund of Rs. 1,73,55,343/- to the exporter which is erroneous, against the weight of evidences available on record 3 and contrary to the guidelines issued by the CBEC, vide Circular No. 12/2014-Cus dated 17.11.2014 read with Section 14 of the Customs Act, 1962 and the Customs Valuation (Determination of Value of Export Goods) Rules, 2007. Even if all the test reports are taken into consideration, three out of four test reports indicated more than 60% Fe content. Therefore, for the reasons indicated above, the final assessment order passed by the Deputy Commissioner, Customs Division, Paradeep is not legal and proper and contrary to principles of law, circular issued by the CBEC."

9.1. It is a fact that duty is to be paid on the Fe content ascertained as per the Discharge Port report. Admittedly, the Id. adjudicating authority, while passing the Final Assessment Order dated 07.10.2021, found that the Discharge Port Report showed the Fe content of 58.17 % and that the Final Invoice had been raised as per the contract between the exporter and the overseas buyer. It was also noticed that the amounts remitted against the subject consignments were in conformity with the Final invoice raised on the foreign buyer based on Discharge Port Certificate. However, we find that these facts have not been disputed by the Ld. Commissioner (Appeals) in the impugned order. Therefore, in these circumstances, we find that the Ld. Commissioner (Appeals) has gone beyond the law laid down by way of various judicial pronouncements.

10. In this regard, we take note of the fact that the said issue has been examined by the Tribunal in the case of Commissioner of Customs (Export), Goa v. V.G.M. Exports [2013 (291) E.L.T. 572 (Tri. – Mumbai)] wherein it was observed as under:

"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."

10.1. Further, in the case of Commissioner of Customs, Visakhapatnam v. Rashmi Metaliks Ltd. [2016 (342) E.L.T. 458 (Tri. – Hyderabad)], the Tribunal has observed as follows: -

"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."

21. We also find that similar view has been taken by the Tribunal in the case of Bonai Industrial Co. Pvt Ltd, Rungta Mines, Feegrade & Co. Pvt Ltd & Others Vs CC, Visakhapatnam (supra) as well as Vibhutigudda Mines Vs CC [2025 (5) TMI 171 – CESTAT Hyd].

22. Insofar as issue (D) is concerned, we find that the matter is no longer res integra as the transaction value w.e.f. 01.01.2009 has to be the FOB price and no cum-duty benefit is admissible for computing the value for payment of export duty. This view has been upheld by the Tribunal in the case of CC (Port), Kolkata Vs Sesa Goa Ltd (supra) and Mahalakshmi & Co Vs CC, Visakhapatnam [2025 (8) TMI 1306 – CESTAT Hyd] where similar view has been taken. Thus, to this extent, appeal cannot sustain.

23. In view of the factual matrix of each case, the issues involved, arguments made by the learned Advocate, submissions made by the department and various case laws cited by both sides, we give our findings, as under:

- a) Export consignments having mixture of certain percentage of Iron Ore lumps with predominantly Iron Ore fines cannot be separately segregated to apply different rates, as Iron Ore fines and Iron Ore lumps. Therefore, the entire consignment has to be treated as that of Iron Ore fines and the applicable rate to Iron Ore fines will be applicable for charging export duty.
- b) On finalization of provisionally assessed shipping bills based on final invoice and BRCs, there cannot be any redetermination of either export value as declared in the final invoice or quantity based on moisture percentage determined by CRCL lab.
- c) The FOB value declared will be treated as FOB value and no deduction thereon is permissible and therefore, no cum-duty benefit would be applicable on such FOB value.

24. Therefore, in view of the above discussions, the appeals filed by the department are dismissed, as the grounds taken for rejecting the Order of the Commissioner (Appeals) are not sustainable in view of our findings,

supra. Insofar as the appeals filed by the appellants/exporters are concerned, the demand, if any, raised on account of redetermination of transaction value applying any contemporaneous value would not sustain and to that extent, the demand will be set aside. However, insofar as the recomputation of refund amount is concerned, the matter is remanded back to the Original Authority to recompute the total amount of refund admissible in the light of our findings on various issues, supra. All appeals of the appellants/exporters are partly allowed accordingly.

25. Department's appeals are dismissed and the appellant's appeals are partly allowed accordingly.

26. Consequential relief, if any, would be admissible as per law.

(Pronounced in open court on 21.11.2025)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)