IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

EASTERN ZONAL BENCH: KOLKATA

Customs Stay No. C/S-757/2010
AND
CUSTOMS Appeal Nos. 254/10,283/10

(Arising out of Order-in-Appeal Nos. KOL/CUS/CKP/144 dated-25/05/2010 & KOL/CUS/CKP/192/2010 dated- date- 21.06.2010 passed by the Commissioner of Customs (Appeals),Kolkata.

Commissioner of Customs (Port), Kolkata

Applicant (s)/Appellant (s)

Vs.

1) M/s. Essel Mining & Industries Ltd.
2) Mahalaxmi & Co.

Respondent (s)

Appearance:

Shri S. Guha , A.C. (AR) for the Appellant (s)

Sri R. Raghavan, Advocate for the Respondent (s)

CORAM:

Hon'ble Shri P.K.Choudhary, Member (Judicial)
Shri Bijay Kumar, Hon'ble Technical Member

Date of Hearing/Decision:- 14.05.2018

ORDER NO. : F/76054-55/2018

Per Shri P.K.Choudhary

The stay petition is filed in Appeal No.C/254/2010 seeking stay of the operation of the respective Order-in-Appeal passed by the

Commissioner of Customs (Appeals), Kolkata. Since, one more appeal involving the same issue is listed for final disposal, with the consent of both sides, both the Appeals are being considered for disposal.

2. These appeals are filed against KOL/CUS/CKP/144 dated- 25/05/2010 & KOL/CUS/CKP/192/2010 dated- dated- 21.06.2010 passed by the Commissioner of Customs (Appeals),Kolkata.

3. Ld. A.R. appearing for the Revenue submitted that the first issue relates to determination of assessable value of export goods viz. Iron Ore Fines, by adopting the FOB price as assessable value or treating the said price as cum duty value, for goods exported by the Respondent for the period after 01.01.2009. He submits that the issue had been decided in favour of the Revenue by this Tribunal, vide Order No. FO/A/71188-71218/2013 dt.12.12.2013 which was followed subsequently vide Order No.FO/A/75218-75246/2014 dated 30.04.2014.

4. The ld. A.R. for the Revenue also submits that the second issue involved in the present case is whether duty be calculated on 'Wet Weight' basis, under which the Assessee/Respondent agreed to supply the goods to the overseas purchaser or on the transaction value of the goods on 'Dry Weight' basis for the period after 13.06.2008. He submits that the said issue has been decided by this Tribunal in favour of Assessee/Respondent, vide Order No.FO/A/75192-75217/2014 dated 30.04.2014.

5. We find that this Tribunal had already decided the issue of determination of duty of export goods, namely, Iron Ore Fines, and observed that for the period after 01.01.2009, the said goods be

assessed to duty adopting the FOB Price, vide Order No. FO/A/71188-71218/2013 dt.12.12.2013 and later followed in another case vide Order No. FO/A/75218-75246/2014 dated 30.04.2014. Following the same, the said issue is decided in favour of the Revenue and against the Respondent.

6. We find that the assessment of export goods whether on 'Dry Weight' or on 'Wet Weight' basis, for the period after 13.06.2008, has been decided by this Tribunal in favour of the Assessee/Respondent, observing that the export goods namely, Iron Ore Fines, be assessed to duty, adopting the criteria of 'Dry Weight', as agreed to between the Assessee/Respondent and the overseas purchasers, vide Order No.FO/A/75192-75217/2014 dated 30.04.2014. Hence, this issue is decided in favour of the assessee and against the Revenue.

7. Revenue's appeals and stay petition are disposed off in the above terms.

(Operative part of the Order was pronounced in the court)

Sd/- 15/5/18 Sd/- 15/5/18

(Bijay Kumar)
MEMBER(TECHNICAL)

(P.K.Choudhary)
MEMBER(JUDICIAL)

k.b/-