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

REGIONAL BENCH – COURT NO.2

Customs Appeal No. 323 of 2011

(Arising out of Order-In-Appeal No. KOL/CUS/CKP/217/2011 dated 22.07.2011 passed by Commissioner of Customs (Appeals), Kolkata)

Commissioner of Customs (Port), Kolkata
(15/1, Strand Road, Customs House, 2nd Floor, Kolkata-700001)

Appellant

VERSUS

M/s. Map Mines and Minerals Ltd.
(Suite No. 31, 2nd Floor, 13 Pollock Street,
Kolkata, West Bengal)

Respondent

WITH

Customs Appeal No. 324 of 2011

(Arising out of Order-In-Appeal No. KOL/CUS/CKP/182/2011 dated 28.06.2011 passed by Commissioner of Customs (Appeals), Kolkata)

Commissioner of Customs (Port), Kolkata
(15/1, Strand Road, Customs House, 2nd Floor, Kolkata-700001)

Appellant

VERSUS

M/s. Map Mines and Minerals Ltd.
(Suite No. 31, 2nd Floor, 13 Pollock Street,
Kolkata, West Bengal)

Respondent

And

Customs Appeal No. 369 of 2011

(Arising out of Order-In-Appeal No. KOL/CUS/CKP/199/2011 dated 07.07.2011 passed by Commissioner of Customs (Appeals), Kolkata)

Commissioner of Customs (Port), Kolkata
(15/1, Strand Road, Customs House, 2nd Floor, Kolkata-700001)

Appellant

VERSUS

M/s. Map Mines and Minerals Ltd.
(Suite No. 31, 2nd Floor, 13 Pollock Street,
Kolkata, West Bengal)

Respondent

APPEARANCE :

Mr. Manish Mohan, Authorized Representative for the Appellant
Mr. Sudhir Kumar Mehta, Advocate for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO.76227-76229/2023

Date of Hearing : 24 July 2023
Date of Decision : 24 July 2023

PER R. MURALIDHAR:

The Respondent MAP Mines and Minerals Ltd., had filed Shipping Bills for the export of Iron Ore Fines. Assessing officer determined the value of the goods based on the price by adopting the wet metric ton weight of the Iron Ore find i.e. by including moisture content. The assessing officer also enhanced the value from U.S $ 100.00 to U.S$ 120.00/MT in terms of P. N. 40/2008 dated 04.08.2008. The Respondents filed an Appeal before the Commissioner (Appeals). He has held as under:-

> *"As seen from copies of the contract, which contracts are more or less common to in both the cases, the price of the goods indicated there under is based on the dry metric tones of the exported iron ore fines. Thus the values of the iron ore fines for each shipment have to be determined in terms of the contracts not on the weight of the wet quantities of the goods exported but after determining the weight on the dry quantities. The lower authority erred in not doing so even though specifically provided in the contract. Thus the value of the exported goods has been incorrectly determined based on the wet metric tone quantities." [Emphasis Supplied]*

2. The present Appeal has been filed by the Revenue on the ground that the Commissioner of Customs (Appeals) has held that duty should be charged on the dry weight basis on the ground that the contract was entered on the dry weight basis. The reasoning cited by the appellate authority is contrary to settled law by the Hon'ble Supreme Court in the case of UOI Vs. Gangadhar Narsingdas Agarwal [1997 (89) E.L.T 19 (SC)] that the wet weight basis (i.e iron ore along with its moisture content) should be taken as the basis of charging the export duty on iron ore.

3. Based on the above details, the Authorized Representative of the Revenue prays that impugned OIA is required to be set aside and the present Appeals filed by the Revenue should be allowed.

4. The Learned Advocate appearing on behalf of the Respondent submits that the sale price of the Iron Ore is covered by the contract with the overseas importer. As per this contract, the value is required to be determined based on the dry weight basis only. He further submits that the Commissioner (Appeals) in his Order dated 07/07/2011 (in impugned order) has admitted the fact that the copy of the contract was provided by the Respondent. He submits that after going through the contract the Commissioner (Appeals) has noted that the contracts speaks of payment by the overseas importer on dry weigt based quantity only. Therefore, he submits that the Commissioner (Appeals) was correct in arriving at the value based on Dry weight basis. He further submits that the issue is no more *res integra*. He relies on the following case law:-

(i) Commr. of Customs (Port), Kolkata Vs Sesa Goa Ltd. 2014 (307) E.L.T. 385 (Tri.-Kolkata)

(ii) Commr. of Customs (Port), Kolkata Vs. Essel Mining & Industries Ltd. 2018 (362) E. L. T. 782 (Tri.-Kolkata)

(iii) Essel Mining & Industries Ltd. V. Commissioner-2018 (362) E. L. T. A 210 (S.C.)

5. He submits that the case law of UOI Vs. Gangadhar Narsingdas Agarwal [1997 (89) ELT 19 (SC)] relied upon by the Revenue in their Grounds of Appeal was duly considered in the case of Sesa Goa Ltd. case, wherein the Tribunal has held that the context in which the Supreme Court's judgment was rendered in the case of Gangadhar Narsingdas Agarwal was different from the issue before the Tribunal. He further submits that the present issue is identical to the issue which was before this Tribunal in the case of Sesa Goa Ltd. and Essel Mining & Industries Ltd. cited supra.

6. In respect of the Sesa Goa, to the best on the knowledge of the Learned Advocate, no Appeal was filed by the Department before the Hon'ble Supreme Court. In the case of Essel Mining & Industries Ltd. the Revenue had preferred an Appeal before the Hon'ble Supreme Court where the Supreme Court has only admitted the SLP filed by the Revenue. No Stay has been granted against the order passed by the

Tribunal. Therefore, he submits that as on date, these two decisions of the Kolkata Tribunal are in force without being overturned. Hence, he submits that the decisions of the Tribunal in these cases are squarely applicable to the present case.

7. In the re-joinder, the Learned Authorized Representative of the Revenue submits that he relies on the judgment of Hon'ble Supreme Court in the case of UOI Vs. West Coast Paper Mills Ltd-2004 (164) ELT 325 (SC). In this judgment, the Hon'ble Supreme Court has held that once special leave is granted and Appeal is admitted, the correctness or otherwise of the Tribunal becomes doubtful. Based on these judgment, he submits that the two decisions of the Tribunal cited by the Learned Advocate are yet to reach finality. Hence, they cannot be applied to the present case.

9. Heard both sides and perused the documents.

10. Admittedly there is no dispute to the fact that the Respondent has provided the copy of the Agreement with the overseas importer wherein, it is specified that the Respondent will be paid based on the dry matric weight of the iron ore.

11. This Tribunal in the case of Sesa Goa Ltd. cited supra has held as under:-

> ***5.*** *Rebutting the contention of the Revenue, ld. CA for the Respondent submitted that the reliance placed by the Department on the judgment of the Hon'ble Supreme Court in the case of UOI v. Gangadhar Narsingdas Agarwal (supra) is misplaced,* <u>*inasmuch as the said judgment was delivered in the context of determination of export duty on specific criteria of per metric ton basis, whereas, in the present case, the levy of export duty is on ad valorem basis. Therefore, the said judgment is not applicable.*</u>
>
> ***7.*** *The Department has challenged the said observation mainly on the ground that the Hon'ble Supreme Court* <u>*in the case of Gangadhar Narsingdas Agarwal (supra), had observed that wet weight be adopted in contrast to the dry weight of the iron-ore fines as the basis for computing the export duty. However, on going through the said judgment, we find that the Hon'ble Supreme Court has decided the*</u>

question whether for the quantification of export duty chargeable on the specific criterion of weight as the basis, be on the dry weight or on wet weight of the iron-ore fines. Needless to say, when the charge of export levy was on specific rate basis, that is on the weight of the iron ore, irrespective of its value, then the basis of dry or wet weight, of the goods become relevant for determination of the quantum of duty. Whereas, in the present case, the duty is levied on the basis of the transaction value agreed between the respondent and the overseas purchaser on the criterion of dry weight of iron ore fines. Therefore, the determination of export duty on the basis of dry weight or wet weight, in our opinion, is irrelevant as the duty to be computed on the value of the goods in dry weight condition, as agreed by the parties. Therefore, we agree with the contention of the ld. CA for the respondent that the said judgment is inapplicable to the facts and circumstances of the present case. In the result, Revenue's appeals filed on this issue is devoid of merit. Accordingly, ld. Commissioner (Appeals') Order to this extent is upheld. Consequently, Revenue's appeals are dismissed. [Emphasis Supplied]

12. This Tribunal in the case of Essel Mining & Industries Ltd. cited supra has held as under:-

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 1-1-2009, the said goods be assessed to duty adopting the FOB Price, vide Order Nos. FO/A/71188-71218/2013, dated 12-12-2013 and later followed in another case vide Order Nos. FO/A/75218-75246/2014, dated 30-4-2014. 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 13-6-2008, 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 Nos.*

FO/A/75192-75217/2014, dated 30-4-2014. Hence, this issue is decided in favour of the assessee and against the Revenue. [Emphasis supplied]

13. Coming to the case law relied upon by the Learned AR in the case of UOI Vs West Coast Paper Mills Ltd, we find that the Tribunals have held as under:-

Commr. of Central Excise, Delhi Vs. Maruti Udyog Ltd- 2016 (335) E.L.T. 777 (Tri. - Del.)

> *2. After hearing both sides, we find that the dispute relates to refund of deposited amount of duty, on success of the appellants case before CESTAT. The only ground of the Revenue is that the Tribunal's order has not been accepted by them and appeal stand filed before the Hon'ble Supreme Court, which is pending.*
>
> *3. The Assistant Commissioner as also the Commissioner (Appeals) has allowed the refund of deposited amount by following the Tribunal's order. It is also not the Revenue's case that the Tribunal's order has been stayed by the Hon'ble Supreme Court. As such, it cannot be said that the impugned orders of the authorities below suffer from illegality or impropriety. As such, we find no merits in the Revenue's appeal. The same is rejected.*
>
> *[Emphasis supplied]*

14. This decision has been affirmed by the Hon'ble Supreme Court in the case of Commissioner v. Maruti Udyog Ltd. - 2016 (335) E.L.T. A221 (S.C.)

15. The Chennai Tribunal in the case of Commr. of Cus. (Airport), Chennai Vs. Kothari Sugars & Chemical Ltd.-2008 (230) E.L.T. 284 (Tri. - Chennai) has held as under:-

> *5. After giving careful consideration to the submissions, I find that the ruling of the Apex Court in Oswal Agro Mills (supra) was followed by the Tribunal in the case of Aristo Spinners (P) Ltd. (supra). The same ruling is applicable to the facts of the instant case. Hence the decision of the lower appellate authority in favour of the refund claimant by following the Tribunal's decision rendered in Aristo Spinners case cannot be faulted, nor can the plea of ld. JCDR that on account of the departmental appeal against Aristo Spinners (supra) having been admitted by the High*

> *Court the operation of the impugned order has to be stayed, be accepted. The Hon'ble High Court has not stayed the operation of the Tribunal's decision. [Emphasis supplied]*

16. Therefore, we find that the above decisions are squarely applicable in the present case also since no Stay has been granted by the Supreme Court in respect of the Appeal filed by the Revenue against Tribunal's order in the Sesa Goa case.

17. We find no merit in the Appeals filed by the Revenue and we dismiss the same.

(Operative part of the order was pronounced in the open court.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Sd/-
(Rajeev Tandon)
Member (Technical)

Pooja