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

REGIONAL BENCH – COURT NO.1

Customs Appeal No.143 of 2011

(Arising out of Order-in-Appeal No.Kol/Cus/CKP/43 & 44/2011 dated 15.02.2011 passed by Commissioner (Appeals) of Customs, Kolkata)

Commissioner of Customs (Port), Kolkata
15/1, Strand Road, Kolkata-700001

Appellant

VERSUS

M/s Noble Resources & Trading India (P) Ltd.
203-205, Nirmala Plaza, A-1, Forest Park, Bhubaneswar-751009

Respondent

WITH

Customs Appeal No.252 of 2011

(Arising out of Order-in-Appeal No.Kol/Cus/CKP/43 & 44/2011 dated 15.02.2011 passed by Commissioner (Appeals) of Customs, Kolkata)

Commissioner of Customs (Port), Kolkata
15/1, Strand Road, Kolkata-700001

Appellant

VERSUS

M/s Noble Resources & Trading India (P) Ltd.
203-205, Nirmala Plaza, A-1, Forest Park, Bhubaneswar-751009

Respondent

AND

Customs Appeal No.364 of 2011
Customs Appeal No.365 of 2011

(Arising out of Order-in-Appeal No.Kol/Cus/CKP/282-283/2011 dated 30.08.2011 passed by Commissioner (Appeals) of Customs, Kolkata)

Commissioner of Customs (Port), Kolkata
15/1, Strand Road, Kolkata-700001

Appellant

VERSUS

M/s Noble Resources & Trading India (P) Ltd.
203-205, Nirmala Plaza, A-1, Forest Park, Bhubaneswar-751009

Respondent

APPERANCE :

Shri S.Debnath, Authorised Representative for the Appellant
None for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO…76395-76398/2023

DATE OF HEARING : 03 .08.2023
DATE OF DECISION : 03 .08.2023

Per Ashok Jindal :

Revenue are in appeals against the impugned order. All the appeals are having a common issue, therefore, all the appeals are being disposed off by a common order.

2. The facts of the case are that the respondent has exported iron ore fines. The shipping bills were assessed by determining the value of the goods based on the price by adopting the wet metric ton weight of the iron ore fines i.e. by including the moisture content.

3. The respondent challenged the said order before the ld.Commissioner (Appeals), who after examining and relying on the certificate of contract price, dropped the proceedings against the respondent.

4. Against the said order, the Revenue is before us.

5. The ld.A.R. for the Revenue submits that the enhancement was done as per the contemporaneous price of iron ore fines being exported at or about the same time to the same destination country and after duly following the benchmark price published by the CCCMC. Moreover, the respondent during assessment, has accepted the enhancement value and paid the duty without any protest.

6. The ld.A.R. for the Revenue has also relied on the Public Notice No.40/2008 dated 04.08.2008 wherein the calculation of FOB value for export of iron ore fines to China, has explained.

7. None appeared on behalf of the respondents.

8. We have gone through the impugned order and the arguments advanced by the ld.A.R. for the Revenue.

9. We find that before the ld.Commissioner (Appeals), the respondent produced the copy of contract and the price of the goods indicated in the contract is based on Dry Metric ton of the exported iron ore fines. Therefore, the assessment done on the basis of wet matric ton cannot be accepted and the ld.Commissioner (Appeals) has done so by determining weight on dry metric ton and fixed the price for export as per the contract.

10. Further, the ld.A.R. for the Revenue, relied on the Public Notice No.40/2008 dated 04.08.2008, which clearly indicates that it is only a guideline and will not stop the Assessing Officer in considering any other documentary evidence or material fact available for assessment purpose of export of iron ore, for arriving at the correct FOB value on a case to case basis.

11. We further take note of the fact that in the respondent's own case, this Tribunal for the earlier export wherein value enhancement has been done and this Tribunal vide Final Order No.FO/A/75333/2014 dated 08.05.2014, has observed as under :

> "*4. Heard both sides and perused the appeal records. We find that on the issue of export goods namely, iron-ore fines whether to be on DMT basis or WMT basis, this Tribunal had already decided the issue in favour of the assessee in Sesa Goa's case*

(Supra). Following the same, we are of the view that in the present case also, the export goods be assessed to duty on DMT basis. Regarding the rejection of the declared value, we find from the records that the Respondent were not supplied the basis and the contemporaneous pries adopted by the Department for enhancement of the declared value. Both sides agree that for the limited issue of determination of value based on contemporaneous pries, the matter be remitted to the original Adjudicating Authority for re-adjudication of the case afresh, after supplying the evidences/data to the Respondent relating to rejection of the export value declared by the Respondent and its enhancement US $108 per MT to US $117 per MT. in the result, for the limited issue of determination of the value of the export goods, the matter is remitted to the Adjudicating Authority. Accordingly, the Appeal filed by the Revenue is partly allowed to the extent, as above."

12. As the ld.Commissioner (Appeals) has set aside the enhanced value on the basis of contract price for DMT of iron ore fines, therefore, we do not find any infirmity in the impugned order and the same is upheld and the appeals filed by the Revenue are dismissed.

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

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(K.Anpazhakan)
Member (Technical)

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