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

REGIONAL BENCH – COURT NO.2

Customs Appeal No. 75889 of 2014

(Arising out of Order-in-Appeal No. 319/CUS(Exp)/KOL/(P)/2014 dated 31.03.2014 passed by Commissioner (Appeals), Kolkata.)

M/s. AKS Minerals
(13, Pollock Street, Kolkata-700001)

Appellant

VERSUS

Commr. of Customs (Port), Kolkata
(Customs House, 15/1, Strand Road, Kolkata-700001)

Respondent

With

Customs Appeal No. 75890 of 2014

(Arising out of Order-in-Appeal No. 318/CUS(Exp)/KOL/(P)/2014 dated 31.03.2014 passed by Commissioner (Appeals), Kolkata.)

M/s. AKS Minerals
(13, Pollock Street, Kolkata-700001)

Appellant

VERSUS

Commr. of Customs (Port), Kolkata
(Customs House, 15/1, Strand Road, Kolkata-700001)

Respondent

APPEARANCE :
None for the Appellant
Mr. Ashish Misra, Commissioner (AR) & Mr. S. Debnath, Authorized Representative for the Respondent

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

FINAL ORDER NO.75614-75615/2024

Date of Hearing : 22 February 2024
Date of Decision: 22 February 2024

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PER R. MURALIDHAR:

No one was present on behalf of the Appellant. Since the issue pertains to the year 2014, in the interest of justice, we have taken up the Appeal for disposal.

2. The Appellants have exported 1000 WMT & 5000 WMT iron ore vide Shipping Bill Nos. 9481068 dated 20/06/2012 and 9297294 dated 08/06/2012 respectively, wherein, they were to get the payment from the overseas importer based on the DMT. They claimed that the moisture content was 10% and filed the Shipping Bill. However, Assessing Officer did not agree and held that the export duty has to be paid on the entire quantity i.e. WMT quantity of iron ore. In order not to suffer any delay in exports, the Appellants have paid Rs. 1,14,870/- and 6,15,375/- as export duty and filed their Appeals before the Commissioner (Appeals). The Commissioner (Appeals) has dismissed their Appeals. Being aggrieved, the Appellant is before the Tribunal.

3. On going through the Appeal Papers, we find that the Appellant has enclosed contract with their overseas importer wherein it is stated that the amount would be paid on DMT basis. Against the quantity of 1000 WMT/5000 WMT, The Appellant has been given concession of 10% on account of moisture content. The Appellant points out that as per the test ascertained by the Authorized Surveyor, the same was found to be 9.02%/6.38%. Therefore, they submitted that the Assessing Officer was in error in charging the duty on the basis of WMT. They further submitted that the issue is no more *res integra* and is covered by the decision of Kolkata Tribunal in case of CC(Port), Kolkata Vs. Sesa Goa Ltd. wherein Final Order No. FO/A/75192-75217/2014 dated 30/4/2014 which has been held that value to be taken as per the DMT only. We find that the Appellant has been able to prove that the contract with overseas importer was on the basis of

DMT only. Even the moisture content tested by the Department has ascertaining that the Iron Ore exported had 9.02%/6.38% moisture content.

4. It is seen from the OIA that the Commissioner (Appeals) has relied on the case law of UOI Vs. Gangadhar Narsingdas Agarwal [1997 (89) ELT 19 (SC)].

5. On going through the Final Order No. 75192-75217/2014 dated 30/4/2014, it is seen that the issue as to whether the price has to be ascertained based on the WMT or DMT has been settled by the Hon'ble Tribunal. The relevant portions of this Final Order are extracted below:-

> *5. Rebutting the contention of the Revenue, Ld. CA for the Respondent submitted that the reliance placed <u>by the Department on the judgment of the Hon'ble Supreme Court in the case of UOI Vs. Gangadhar Narsingdas Agarwal (Supra) is mis-placed, in asmuch 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 in the case of <u>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</u>. However, on going through the said judgment, we find that the Hon'ble Supreme Court has decided the 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 the duty. <u>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</u>*

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> *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]*

6. There is nothing to indicate that this decision has been stayed or overturned by any higher forum. Therefore, we find that the present issue is squarely covered by above decision. Accordingly, we allow the Appeals filed by the Appellant with consequential relief, if any.

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

Sd/-
(R. Muralidhar)
Member (Judicial)

Sd/-
(Rajeev Tandon)
Member (Technical)

Pooja