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

REGIONAL BENCH – COURT NO.1

1. Customs Appeal No. 75803/2019
2. Customs Appeal No. 75799/2019
3. Customs Appeal No. 75798/2019
4. Customs Appeal No. 76267/2019

(Arising out of Order-in-Original No. CC(P)/BBSR/Cus/No.04/ Commissioner/2018 dated 26.09.2018 passed by the Commissioner of Customs (Preventive), Bhubaneswar)

M/s Sirajuddin & Co. Pvt. Ltd.,
7th Floor, C-Wing, Fortune Towers, Chandrasekharpur, Bhubaneswar, Odisha, Pin – 751023.
Mr. Seraj Yusha,
7th Floor, C-Wing, Fortune Towers, Chandrasekharpur, Bhubaneswar, Odisha, Pin – 751023.
Meraj Yusha,
7th Floor, C-Wing, Fortune Towers, Chandrasekharpur, Bhubaneswar, Odisha, Pin – 751023.
Sarosh Yazdani,
7th Floor, C-Wing, Fortune Towers, Chandrasekharpur, Bhubaneswar, Odisha, Pin – 751023.

..... Appellant

VERSUS

Commissioner of Customs (Preventive), Bhubaneswar,
C.R. Building, Rajaswa Vihar, Bhubaneswar – 751007, Odisha.

...... Respondent

WITH

5. Customs Appeal No. 75793/2019
6. Customs Appeal No. 75791/2019
7. Customs Appeal No. 75792/2019

(Arising out of Order-in-Original No. CC(P)/BBSR/Cus/No.07/ Commissioner/2018 dated 25.10.2018 passed by the Commissioner of Customs (Preventive), Bhubaneswar)

M/s K.K. Resources Pvt. Ltd.,
Serajuddin Square, NH-6, Keonjhar – 758001, Odisha.
Khaliqur Rahman,
Serajuddin Square, NH-6, Keonjhar – 758001, Odisha.
Khatibur Rahman,
Serajuddin Square, NH-6, Keonjhar – 758001, Odisha.

..... Appellant

VERSUS

Commissioner of Customs (Preventive), Bhubaneswar,
C.R. Building, Rajaswa Vihar, Bhubaneswar – 751007, Odisha.

...... Respondent

WITH

8. Customs Appeal No. 75806/2019
9. Customs Appeal No. 75805/2019
10. Customs Appeal No. 75804/2019

(Arising out of Order-in-Original No. CC(P)/BBSR/Cus/No.08/ Commissioner/2018 dated 26.10.2018 passed by the Commissioner of Customs (Preventive), Bhubaneswar)

M/s. Modern Mining Pvt. Ltd.,
Serajuddin Square, NH-6, Keonjhar – 758001, Odisha.
Khaliqur Rahman,
Serajuddin Square, NH-6, Keonjhar – 758001, Odisha.
Khatibur Rahman,
Serajuddin Square, NH-6, Keonjhar – 758001, Odisha.

...... Appellant

VERSUS

Commissioner of Customs (Preventive), Bhubaneswar,
C.R. Building, Rajaswa Vihar, Bhubaneswar – 751007, Odisha.

.......Respondent

WITH

11. Customs Appeal No. 75802/2019
12. Customs Appeal No. 75801/2019
13. Customs Appeal No. 75800/2019

(Arising out of Order-in-Original No. CC(P)/BBSR/Cus/No.04/ Commissioner/2018 dated 26.09.2018 passed by the Commissioner of Customs (Preventive), Bhubaneswar)

M/s. Sirajuddin & Co.,
19/A, Abdul Hamid Street, 1st Floor, Kolkata – 700069.
Md. Moffazzulur Rahman,
Serajuddin Square, Keonjhar, Odisha, Pin – 758001.
Md. Intekhab Alam,
C-7, Panchsheel Enclave, New Delhi – 110017.

..... Appellant

VERSUS

Commissioner of Customs (Preventive), Bhubaneswar,
C.R. Building, Rajaswa Vihar, Bhubaneswar – 751007, Odisha.

...... Respondent

WITH

14. Customs Appeal No. 76236/2019
15. Customs Appeal No. 76248/2019
16. Customs Appeal No. 76244/2019
17. Customs Appeal No. 76247/2019
18. Customs Appeal No. 76237/2019

(Arising out of Order-in-Original No. CC(P)/BBSR/Cus/No.08/ Commissioner/2018 dated 26.10.2018 passed by the Commissioner of Customs (Preventive), Bhubaneswar)

M/s. Sirajuddin & Co.,
19/A, Abdul Hamid Street, 1st Floor, Kolkata – 700069
Mr. Seraj Yusha,
7th Floor, C-Wing, Fortune Towers, Chandrasekharpur, Bhubaneswar – 751023.
Mr. Meraj Yusha,
7th Floor, C-Wing, Fortune Towers, Chandrasekharpur, Bhubaneswar – 751023.
Md. Intekhab Alam
C-7, Panchsheel Enclave, New Delhi – 110017
Md. Moffazzulur Rahman
Serajuddin Square, Keonjhar, Odisha, Pin – 758001

..... Appellant

VERSUS

Commissioner of Customs (Preventive), Bhubaneswar,
C.R. Building, Rajaswa Vihar, Bhubaneswar – 751007, Odisha.

...... Respondent

AND

19. Customs Appeal No. 76250/2019
20. Customs Appeal No. 76241/2019
21. Customs Appeal No. 76239/2019
22. Customs Appeal No. 76238/2019
23. Customs Appeal No. 76240/2019

(Arising out of Order-in-Original No. CC(P)/BBSR/Cus/No.07/ Commissioner/2018 dated 25.10.2018 passed by the Commissioner of Customs (Preventive), Bhubaneswar)

M/s. Sirajuddin & Co.
19/A, Abdul Hamid Street, 1st Floor, Kolkata – 700069
Mr. Seraj Yusha
7th Floor, C-Wing, Fortune Towers, Chandrasekharpur, Bhubaneswar – 751023.
Mr. Meraj Yusha
7th Floor, C-Wing, Fortune Towers, Chandrasekharpur, Bhubaneswar – 751023.
Md. Intekhab Alam
C-7, Panchsheel Enclave, New Delhi – 110017

Md. Moffazzulur Rahman
Serajuddin Square, Keonjhar, Odisha, Pin – 758001

..... Appellant

VERSUS

Commissioner of Customs (Preventive), Bhubaneswar,
C.R. Building, Rajaswa Vihar, Bhubaneswar – 751007, Odisha.

...... Respondent

AND

24. Customs Appeal No. 75787/2019
25. Customs Appeal No. 75782/2019
26. Customs Appeal No. 75786/2019
27. Customs Appeal No. 75788/2019

(Arising out of Order-in-Original No. CC(P)/BBSR/Cus/No.03/ Commissioner/2018 dated 25.09.2018 passed by the Commissioner of Customs (Preventive), Bhubaneswar)

M/s. Sirajuddin & Company
19/A, Abdul Hamid Street, 1st Floor, Kolkata – 700069
Md. Moffazzulur Rahman
Serajuddin Square, Keonjhar, Odisha, Pin – 758001
Mr. Seraj Yusha
7th Floor, C-Wing, Fortune Towers, Chandrasekharpur, Bhubaneswar – 751023.
Mr. Meraj Yusha
7th Floor, C-Wing, Fortune Towers, Chandrasekharpur, Bhubaneswar – 751023

..... Appellant

VERSUS

Commissioner of Customs (Preventive), Bhubaneswar,
C.R. Building, Rajaswa Vihar, Bhubaneswar – 751007, Odisha.

...... Respondent

AND

28. Customs Appeal No. 75790/2019
29. Customs Appeal No. 75789/2019
30. Customs Appeal No. 75025/2020
31. Customs Appeal No. 75026/2020
32. Customs Appeal No. 75027/2020

(Arising out of Order-in-Original No. CC(P)/BBSR/Cus/No.06/ Commissioner/2018 dated 24.10.2018 passed by the Commissioner of Customs (Preventive), Bhubaneswar)

M/s. Sirajuddin & Company
19/A, Abdul Hamid Street, 1st Floor, Kolkata – 700069

Md. Moffazzulur Rahman
Serajuddin Square, Keonjhar, Odisha, Pin – 758001
Md. Sarosh Yazdani
7th Floor, C-Wing, Fortune Towers, Chandrasekharpur, Bhubaneswar, Odisha, Pin – 751023
Mr. Seraj Yusha
7th Floor, C-Wing, Fortune Towers, Chandrasekharpur, Bhubaneswar – 751023.
Mr. Meraj Yusha
7th Floor, C-Wing, Fortune Towers, Chandrasekharpur, Bhubaneswar – 751023

..... Appellant

VERSUS

Commissioner of Customs (Preventive), Bhubaneswar,
C.R. Building, Rajaswa Vihar, Bhubaneswar – 751007, Odisha.

...... Respondent

AND

33. Customs Appeal No. 75794/2019
34. Customs Appeal No. 75795/2019
35. Customs Appeal No. 75796/2019
36. Customs Appeal No. 75797/2019
37. Customs Appeal No. 77193/2019

(Arising out of Order-in-Original No. CC(P)/BBSR/Cus/No.05/ Commissioner/2018 dated 26.09.2018 passed by the Commissioner of Customs (Preventive), Bhubaneswar)

M/s. Sirajuddin & Company
19/A, Abdul Hamid Street, 1st Floor, Kolkata – 700069
Mr. Meraj Yusha
7th Floor, C-Wing, Fortune Towers, Chandrasekharpur, Bhubaneswar – 751023
Mr. Seraj Yusha
7th Floor, C-Wing, Fortune Towers, Chandrasekharpur, Bhubaneswar – 751023.
Md. Moffazzulur Rahman
19/A, Abdul Hamid Street, 1st Floor, Kolkata – 700069
Md. Intekhab Alam
C-7, Panchsheel Enclave, New Delhi – 110017

..... Appellant

VERSUS

Commissioner of Customs (Preventive), Bhubaneswar,
C.R. Building, Rajaswa Vihar, Bhubaneswar – 751007, Odisha.

...... Respondent

APPERANCE :

Shri N.K.Chowdury & Shri Arijit Chakraborty, both Advocates for the Appellant
Shri Subrata Debnath, Authorized Representative for the Respondent

Customs Appeal Nos.75782,75786-75806, 76236-76241,76244,76247,76248,76250, 76267,77193/2019 & 75025,75026,75027/2020

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

FINAL ORDER NO.76305-76341/2024

DATE OF HEARING : 22 .05.2024

DATE OF PRONOUNCEMENT : **15.07.2025**

Per Ashok Jindal :

The Appellant Nos.(1), (5) and (8) are the Merchant Exporters and the Appellant Nos.(2), (3), (4), (6), (7), (9) & (10) are the Directors of the said Merchant Exporters. The Appellant Nos.(11), (14), (19), (24), (28) & (33) are the suppliers/traders/mine owners and Appellant Nos.(12), (13), (15), (16), (17), (18), (20), (21), (22), (23), (24), (25),(26), (27), (29), (30), (31), (32), (34), (35), (36) & (37) are the partners of the suppliers/traders/mine owners. The impugned period is 2009-10 to 2011-12.

2. All the appeals are arising out of a common issue and the facts are almost the same. Therefore, all are being disposed off by a common order.

3. The facts of the case are that the Merchant Exporters are Private Limited Companies. They purchased the goods from the market and exported the same. During the impugned period, Merchant Exporters exported "Iron Ore Fines" having Fe content upto 64% to China through Paradeep Port in Odisha against various Shipping Bills. The Merchant Exporters had procured the said "Iron Ore Fines" from the owners of Mines and also from the Traders. They purchased the same from various

suppliers, namely, M/s Shah Brothers, M/s Thakur Prasad Sao & Sons Pvt. Ltd. (Mine Owner) M/s S.P. Minerals & Logistics, M/s R.K. Behuria. M/s. Core Minerals. M/s Satguru Metals, M/s Padma Logistic and Khanji (P) Ltd.. M/s Balaji Ispat, M/s Gopi Krishna Minerals & Metals (P) Ltd., M/s S.N. Mohanty, M/s Feraz Enterprises Pvt. Ltd., M/s Gitarani Mohanty, M/s Kamaljeet Singh Ahluwaila, Ciflore Export Ltd., M/s BRM Hi-Tech Steels (P) Ltd., M/s Nandighosh Infrastructure & Logistics and M/s Serajuddin & Co.

3.1 In terms of the provisions of the Import Export Policy during the impugned period for export of Iron Ore having Fe content upto 64%, the same is freely exportable and no duty is leviable on the same.

3.2 The Merchant Exporters procured "Iron Ore Fines" from the above named suppliers and brought the same to port area and stacked them. The Merchant Exporters engaged M/s. Therapeutics Chemical Research Corporation. M/s. Intertech Pvt. Ltd. and M/s. Inspectorate Griffith India Pvt. Ltd. for quantity and quality analysis of the said "Iron Ore Fines" at the port of loading i.e. Paradeep Port. The said agencies issued pre-shipment certificates/pre-shipment analysis for submission to the Customs Authorities for the clearance of the export goods. The said certificates shows the Fe content of the "Iron Ore Fines" was less than 64%. The Merchant Exporters submitted the Shipping Bills along with Invoice, Bill of Lading, Contract with Overseas Buyer, Pre-shipment Inspection Certificate etc. before the Customs Authorities for clearance of the goods. In the Shipping Bills, the goods were declared as Iron Ore Fines. "Low Grade Iron Ore Fines having Fe content upto 64.00% are freely exportable". The Shipping Bills were assessed by the Customs and allowed clearance. In the body of the Shipping Bills, it has been mentioned "Assessed Finally". The Customs Authorities at the Port of Loading took representatives samples and cleared the goods under Test Bond in some cases. The export was allowed without raising any query/objection.

3.3 Later on, an investigation was conducted by the Directorate of Revenue Intelligence, Kolkata on 10.06.2014 and 28.07.2014.

3.4 Thereafter, show-cause notices were issued to the Merchant Exporters and their Directors on 28.07.2016 & 27.10.2016 proposing confiscation of the goods and imposition of penalties on the allegations that the Merchant Exporters had already exported the said goods with Fe content more than 64% in violation of the Foreign Trade Policy. Accordingly, it was proposed that the goods have been mis-declared to avoid payment of Customs duty. Consequently, it was proposed why should not the exported goods be confiscated and penalties on the Merchant Exporters and their Directors be imposed. In the show-cause notices, penalties were also proposed to be imposed on suppliers/traders/mine owners alleging that they were collided with the Merchant Exporters in exporting the restricted goods as well as use of false information in their Invoices.

3.5 The above said allegations made in the show-cause notices on the basis that suppliers have mentioned the Grade in their Invoice below 64% Fe content and some cases the suppliers did not mention any grade of Fe content in their Invoice. The Merchant Exporters could not provide all the purchase invoices. The Periodic Despatch Report allegedly shows the Fe content was more than 64%. For this, Revenue relied on the Form L issued by the Office of the Deputy Director of Mines granting permission to despatch. The said Form contained the particulars i.e. name of the parties, quantity despatched from the respective stack, grade (Fe%) of stacks, destination of the ores etc. wherefrom it was found that the Fe content of the Ores was ranging from 63.14 to 64.70%. Reliance has also been placed on the sale price of the Iron Ore Fines to infer about the value of the Iron Ore Fines having higher Fe content. Stacking Analysis Report was also relied upon where M/s. Serajuddin & Co. has engaged different contractors i.e. M/s. Thriveni Earth Movers Pvt. Ltd. and Others for raising Iron Ores. They were getting the samples tested through third party agencies i.e. M/s. Kalyani Laboratories and M/s. Mitra S.K. Pvt. Ltd. and M/s. Inspectorate, which shows the Fe content of the "Iron Ores" was more than 64%. Statements were also recorded from one of the Directors, Mr. Khaliqur Rahman, the Mines Manager of M/s. Serajuddin & Co. Sri P. K. Dehury and Sri Prafulla Kumar Pati. Manager. But they did not accept the contention of the Department. Revenue also relied on Form-K, which is the analysis from the Testing Laboratory in the form of certificate issued by the Deputy Director, Government Laboratory Officer of the Deputy Director Mines. Reliance was also placed on payment of Royalty amount on the highest rate to infer about making such payment for Iron Ore having higher Fe content. But no such documents were supplied to the appellants.

3.6 All the appellants contested the show-cause notices, but after adjudication, it was held that the goods were liable for confiscation and they are liable to pay redemption fine on the exported goods and the penalties on all the appellants were imposed under Section 114 & Section 114AA of the Customs Act, 1962.

3.7 Aggrieved from the said order, the appellants are before us.

4. The ld.Counsel appearing on behalf of the Merchant Exporters and its Directors, submitted that the allegation in the Show Cause Notices are not supported by any evidence in as much as the relevant relied upon documents have not been enclosed with the Show Cause Notices. On request of the appellants, these documents were supplied to the appellants.

4.1 He further submitted that the adjudicating authority made an observation on perusal of the show-cause notices and relevant records but no such relevant records have been disclosed in this proceeding. The Ld. Adjudicating Authority has mentioned that DRI Officers visited the Office of M/s. Serajuddin & Company on 12-03-2015 and resumed certain documents, namely, Periodic Despatch Reports along with Party-wise Summary Reports, for the month of September 2010 to October 2011 and In-house Test Reports, Sample Test Reports, Form L and Form K, but no such documents have not been disclosed in this proceeding. Therefore, the allegations have been made against the Merchant Exporters and their Director for the purposes of third party evidences, which cannot be the basis to implicate the Merchant Exporters and their Directors in this proceedings. He, therefore, submitted that the show-cause notice has been issued on the basis of the documents mentioned in Annexure A to E. which were nothing but Typed Statements on the basis of some alleged documents resumed from the Office of one of the suppliers. M/s. Serajuddin & Company. In the absence of any document mentioned in the Show Cause Notices, the allegations cannot be properly appreciated, though the said documents are third party documents and the appellant had nothing to do with the same.

4.2 It is further submitted that the instant proceeding is also otherwise not maintainable being based on incomplete investigation. There were number of other suppliers other than M/s. Serajuddin & Company as mentioned in Paragraph (2) hereinabove. The Respondent did not make any interrogation/investigation against any of those suppliers. They have also not been made parties to this proceeding. Form-L (the Letter of Permission/Transit Permit for Lessee) and Form K (Chemical Analysis Report of Mineral) were being provided by the Government showing Fe content was less than 64%. The said Form-K and Form-L were being issued from the Office of the Deputy Director of Mines in terms of Rule-10 of the Orissa Minerals (Prevention of theft, smuggling and illegal mining and Regulation of possession, storage, trading and transportation) Rules, 2007. The Revenue did not make any investigation before the Governmental Authority. On the other hand, doubts have been expressed and/or no reliance has been placed on those documents. In the said findings, the Ld. Adjudicating Authority had also expressed untrust worthiness in respect of Pre-shipment certificate/Pre-shipment analysis issued by the Inspection Agencies engaged by the appellant and Test Reports in respect of samples drawn at random at the time of export without providing any contrary Test Reports.

4.3 He further submitted that they are having Pre-shipment Test Report and Pre-Shipment Analysis showing that the Fe content of the exported goods were below 64%. The Test Report given by the Deputy Chief Chemist of Chemical Laboratory, Customs House, Kolkata, also shows the Fe content of the exported goods were below 64%. The said Report was given on examining/testing the samples drawn at random by the Customs Authorities at Paradeep Port at the time of export. The said exported goods were also examined by the foreign buyer, which also shows the Fe content of the exported goods below 64%. In spite of having those Test Reports in the possession by the Customs Authorities, they conveniently chose not to disclose the said Test Reports in the Show Cause Notices.

4.4 He further submitted that Form-L issued from the Office of the Deputy Director of Mines showing granting of permit to transfer the goods to the supplier from different stacks were less than 64%. The appellant also submitted the Test Reports collected from the Government Laboratory of Kolkata along with their Written Submission and the Ld. Adjudicating Authority conveniently chooses not to comment anything on those documents.

4.5 He further submitted that not a single document in support of the contention in the Show Cause Notice to substantiate their contention. It is his submission that the reply to the show-cause notices were not considered by the ld.Adjudicating Authority.

4.6 He further submitted that the reliance on the third party documents such as Periodic Despatch Reports has of no relevance. Periodic Despatch Report was being prepared by the Mines Owners/Suppliers for their internal purpose and for submitting Returns before the Deputy Director of Mines. Periodic Despatch Reports contains various headings including Reflection of Grade, Stack, Closing Balance, Stack Number, Destination etc.. which has nothing to do with the goods supplied/exported by the Merchant Exporters.

4.7 He further submitted that the Sales Price of Iron Ore Fines by the suppliers cannot be a determining factor for considering Fe content in the Iron Ore Fines. The price of Iron Ore depends on demand and supply range in the market and, therefore, the Sales Price cannot be a factor for determining Fe content in the Iron Ore Fines.

4.8 He further submitted that the payment of Royalty at the high rate as was being paid by M/s. Serajuddin & Company also cannot be a factor. The suppliers were paying the royalty at the high rate according to the said Rule 10(7), which provides for payment of higher rate of Royalty in case of fully mechanised mines and for dispensing with the making of stacking and sampling.

4.9 He further submitted that the said Rule provides the provisions for issuing Form-L (Transit Permit), which would remain valid for 30 days from the date of issue as mentioned in Rule 10(8). If the goods are not cleared from the stack totally, the balance quantity would be considered as 65% Fe content. This is for the purpose of transport of Iron Ore by the supplier from the Mines and this has nothing to do for determining Fe content in connection with the export of goods.

4.10 He further submitted that M/s. Serajuddin & Company is a Partnership Firm and the Merchant Exporters are Private Limited Companies, merely because Directors of the appellant are the sons of a partner of the Partnership Firm, that cannot make M/s. Serajuddin & Company as the Sister Concern of the Merchant Exporters.

4.11 He further submitted that the Ld. Adjudicating Authority in his finding has dealt with that Customs Officers at Paradeep Port allowed clearance of the goods on the basis of Pre-shipment Certificate/Pre-shipment Analysis which shows that the Fe content were less than 64%. The Customs Officers also took representative samples from its consignments and cleared the same under ITC Bond. He submitted that even thereafter and in the absence of any contrary Test Report, an inference has been made from some third party document that the Merchant Exporters have exported the goods having Fe content above 64%, which cannot be permissible in law.

4.12 He further submitted that the appellant's goods were assessed finally, which cannot be re-opened in spite of having granting clearance under ITC Bond since Test Report from the Customs House Government Laboratory have also come reflecting the Fe content of the exported goods upto 64%. To support his contention, he relied on the decision of this Tribunal in the case of Ramapati Exports 2002(142) ELT 77 (Tri-Kol.), but the Ld. Adjudicating Authority observed as under :–

"even assuming that the Shipping Bills were assessed finally there is no bar for initiating proceedings under Section 124 of the Customs Act, 1962 for the confiscation of the goods".

4.13 It is his submission that the Merchant Exporters did not obtain the Order of clearance of the goods fraudulently. The Merchant Exporters presented the goods along with the Pre-shipment Test Reports which was tallied with the Test Report collected from the Custom House Laboratory of Kolkata by the Merchant Exporters. The investigation of DRI Authorities did not pin-point any document of the Merchant Exporters which was found to be incorrect. The DRI Authorities relied upon some third party documents and an inference has been made that the exported goods were having Fe content more than 64%. This is wholly on the basis of assumption and presumption. The assessment made final in this case and there is no scope for attaching any provisionality under any circumstances in the absence of any clear Order of Provisional Assessment.

4.14 He further submitted that the goods have already been exported not in the possession of the Department nor any Bond can be executed since the Test Report of the samples could not be produced by the Department till date before the Ld. Adjudicating Authority as well as not supplied to the Merchant Exporter. The Merchant Exporter collected the said Report, which was tallying with the Test Report submitted at the time of export of the goods before the Customs Authorities. Therefore, no confiscation order can be passed in this proceedings. There is nothing even for initiation of the proceedings.

4.15 He further submitted that the goods were not prohibited. The Merchant Exporters did not violate any restriction; therefore, question of violation of the provisions of the Foreign Trade Policy does not arise.

4.16 It is his submission that the impugned order holding that the goods are liable for confiscation and imposing of redemption fine and penalties on the Merchant Exporters and on the suppliers/traders/mine owners, is to be set aside.

4.17 He also relies on the following case laws :

(i) ITC Ltd. : 2006 (203) ELT 532 (S.C.)

(ii) Hindustan National Glass Industries Ltd. : 2005 (182) ELT 132 (SC) ;

(iii) Indo Export House 2004 (168) ELT 142 (Tri. Del.)

(iv) Gangadhar Narsingdas Aggarwal 1997 (89) ELT 19 (SC) ;

(v) Bagadiya Brothers Pvt. Ltd. 2010 (249) ELT 387 (Tri. Bang.) ;

(vi) Mineral Enterprises Ltd. 2010 (153) ELT 241 (Tri. Bang.) ;

(vii) Sesa Goa Ltd. 2014 (310) ELT 915 (Tri. - Kolkata) ;

(viii) Alpine International 2008 (224) ELT 331 (Tri. Bang.) ;

(ix) Ganesh Dyeing and Textile Processing Co. 1986 (23) ELT 257 (T) ;

5. On behalf of suppliers/traders/mine owners, the ld.Counsel, Shri Arijit Chakraborty, submitted that M/s. Sirajuddin & Co., the appellant is the supplier of Iron Ore Fines to the exporter and other buyers. The other appellants in the connected appeals are the partners of the appellant firm.

5.1 The appellant was supplying the Iron Ore Fines having less than 64% FE content to different exporters and/or other buyers. The officers of the Directorate of Revenue Intelligence conducted investigation before the exporters and was of the view that the exporters are exporting the Iron Ore Fines having FE content more than 64% in violation of the Foreign Trade Policy. The officers, thereafter, conducted investigation before one of the suppliers i.e. the appellant and resumed some documents like Periodic Despatch Report, In House Sample Test Reports, Sample Test Report done through various testing laboratories returns submitted to the Mining Department etc. wherefrom the officers found that the Iron Ore Fines from the mines were having Fe content more than 64% and it was presumed that only the said goods were supplied to the exporters and hence, the exporters have exported the Iron Ore Fines having Fe content more than 64%. It was alleged that the appellant appeared to have violated the policy and abetted SCPL in draining high quality Iron Ore out of India. Proceeding was initiated against the appellant and it's partners alleging that the appellant is the sister concern of M/s. Sirajuddin & Co. Pvt. Ltd. and the appellants were actively and conjointly involved in the conspiracy of fraudulent export of the restricted items. The appellant had also abetted the exporters in draining high quality Iron Ore out of India violating Foreign Trade Policy.

5.2 The appellant submitted reply to the said show cause and also filed Written Submission denying and disputing the allegations contained in the Show Cause Notice contending inter alia that the whole basis of the allegations are found to be incorrect in view of the fact that the goods exported by the exporters were proved to be having Fe content below 64%. The grade of Iron Ore Fines supplied by the appellant to the exporter is appearing in the transit permit in Form: 'L', which shows that the Mining Department had granted permission for Iron Ore Fines for sale, which was having Fe content more than 64%. The samples tested in the Customs House Laboratory also show that the Iron Ore Fines were below 64% FE Content exported by the exporter. When the goods exported were proved to be having Fe content less than 64%, it cannot be inferred that the appellant had supplied the goods/Iron Ore Fines having more than 64% Fe content. The report submitted from the Government Laboratory cannot be totally brushed aside without any contrary test report and based on some private records maintained for different purposes by the appellant. It is not a case of fraudulent export of restricted goods and the question of having any conjoint involvement in the conspiracy of fraudulent export of restricted goods does not arise. The question of abatement also does not and cannot arise.

5.3 The order passed by the Ld. Adjudicating Authority imposing penalty under Section 114 & 114AA is wholly without any justification. The imposition of penalty under Section 114 provides certain circumstances, which has not been indicated in the Show Cause Notice or in the Order. The appellant had also did not sign any document or declaration, which is false or incorrect. The act of the appellant also does not make the goods liable for confiscation. The imposition of penalty on the appellant and its partners cannot be maintainable in law. The imposition of penalty on the partnership firm and also on its partners, are also not maintainable in law.

5.4 The appellant prays that the order passed by the Ld. Adjudicating Authority imposing penalty on the appellant or its partners are liable to set-aside and quashed with consequential benefit to the appellant and pre-deposit made for filing of the appeal along with interest may kindly be directed to be refunded.

5.5 On the other hand, the ld.A.R. for the Revenue supported the impugned order and submitted that as per the investigation conducted by DRI and Form L issued by the Deputy Director of Mines, it is clearly shown that M/s Serajuddin & Co. has produced high grade iron ore during the relevant period. He also submitted that as per the category of "iron ores", they produced lumps, C.lumps (Crushed Lumps), 10-40 mm size, fines, ROM (Run off Mines) and RWD. He also submitted that except fines, all other categories produced by M/s Serajuddin & Co. were of 65% Fe grade quality whereas fines shown Fe content below

64%. Therefore, they have mis-declared the Fe content of iron ores and fines submitted by them as less than 64%. Accordingly, proceedings were rightly initiated against them. Hence, the goods exported by the appellants are liable for confiscation. Consequently, redemption fines and penalties were rightly imposed on them.

6. Heard both sides and perused the appeal documents.

7. We find that in this case, the dispute is that where iron ores and fines exported by the Merchant Exporter are less than 64% of Fe contents or not ?

8. At the time of filing of Shipping Bills, the appellants obtained Inspection Certificate of Quality from M/s Therapeutics Chemical Research Corporation, M/s Intertech Private Limited & M/s Inspectorate Griffith India Private Limited, certifying that Fe content of the "Iron Ore Fines" is less than 64%. These Shipping Bills were finally assessed and at the time of export of goods, certain samples were drawn by the Customs Authorities and the goods were allowed to be cleared under Test Bond and those Test Reports show that the Fe content is less than 64%. For better appreciation of facts, the Certificate of Quality issued by Therapeutics Chemical Research Corporation, is extracted below :

& ANALYSERS
Marg
400 012
02 / 03 / 04
E-mail : admin@tcrcindia.com
group.com

TCRC 93

THERAPEUTICS CHEMICAL RESEARCH CORPORATION

GOVT. APPROVED INSPECTION AGENCY

REF. NO. ____________ **CERTIFICATE OF ANALYSIS** DATE ____________

REF: TCRC/AUG/3409100103/09-10

PARADIP, INDIA
DATE:11/08/09

CERTIFICATE OF QUALITY

'TO WHOM IT MAY CONCERN'

We hereby certify that an average sample of **IRON ORE FINES**, drawn by our representative between 06.08.2009, 2010Hr to 09.08.2009, 1230Hr for the consignment of 51,580.00 MT during process of loading into **MV THERMIDOR** at PARADIP, INDIA has been analyzed and the actual results are as follows of the Contracted Goods:

Total quantity of Iron Ore Fines including moisture Placed on board under our supervision : 51,580MT

FREE MOISTURE LOSS AT 105 DEGREE CENTIGRADE :

Net Dry Weight of Iron Ore Fines on board : 46354.95 MT

Analysis of samples dried at 105^{0}C
SPECIFICATIONS:
CHEMICAL COMPOSITION (ON DRY BASIS)

FE	:	63.45	PCT
SIO2	:	2.57	PCT
AL2O3	:	3.48	PCT
P	:	0.049	PCT
S	:	0.012	PCT

MOISTURE CONTENT : 10.13 PCT
(FREE MOISTURE LOSS AT 105 DEGREE CENTIGRADE)
PHYSICAL COMPOSITION (ON NATURAL BASIS):

ABOVE 10 MM	:	4.74	PCT
BELOW 10 MM	:	95.26	PCT
BELOW 150 MICRON	:	21.73	PCT

ISSUED AT LOADPORT : PARADIP PORT, INDIA

TCRC BHUBANESWAR

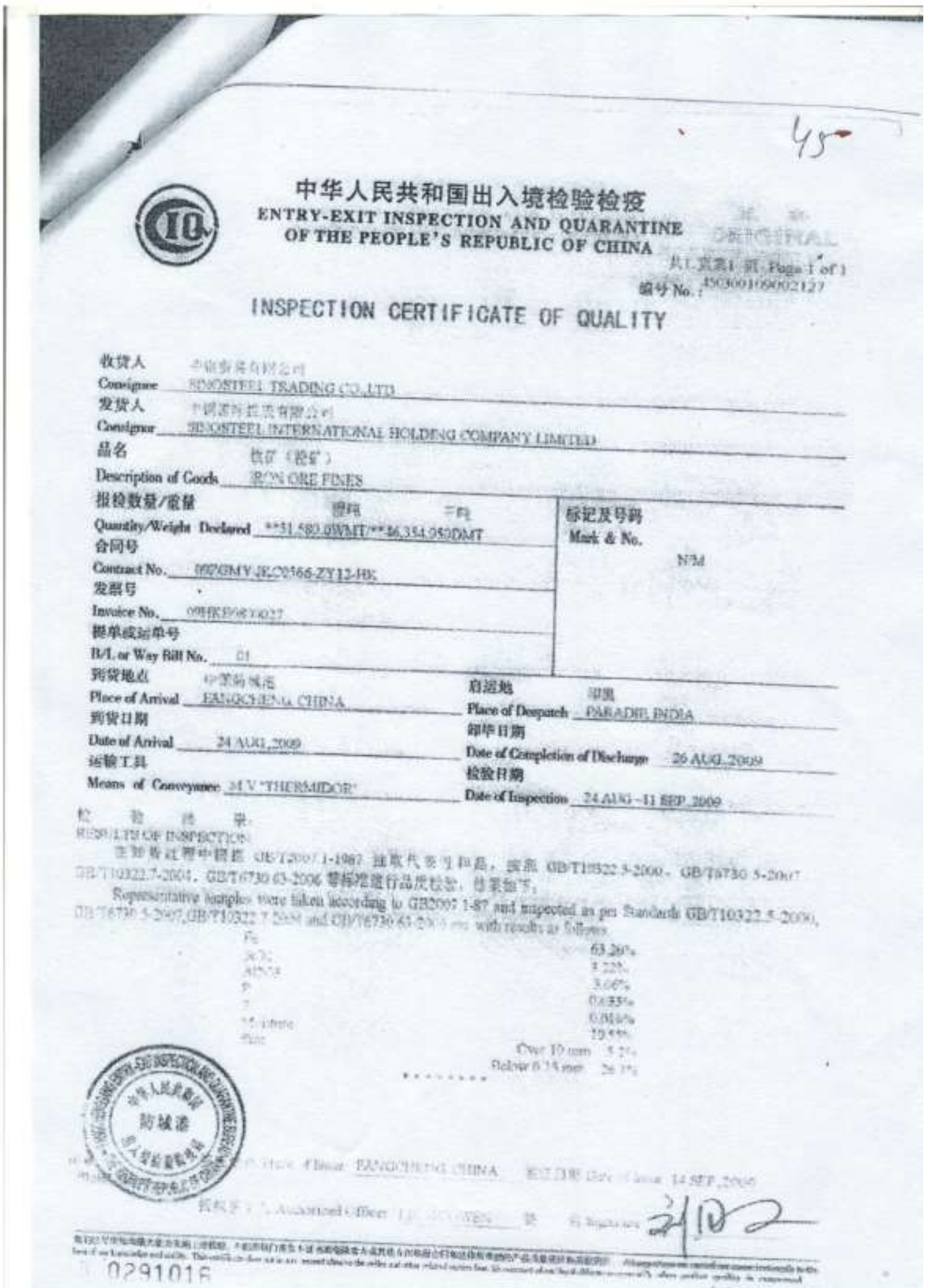
For Therapeutics Chemical Research Corporation

Authorized Signatory

NETWORK ACROSS : ALL MAJOR PORTS OF THE WORLD
TCRC - BHUBANESWAR

Which shows that Fe content of the exported goods is less than 64% i.e. 63.45%.

9. Further, the Inspection Certificate of Quality at the time of importation in China of the impugned goods, the Certificate is also extracted below :



中华人民共和国出入境检验检疫
ENTRY-EXIT INSPECTION AND QUARANTINE OF THE PEOPLE'S REPUBLIC OF CHINA

ORIGINAL

共1页第1页 Page 1 of 1

编号 No.: 450300109002127

INSPECTION CERTIFICATE OF QUALITY

收货人 Consignee: SINOSTEEL TRADING CO.,LTD

发货人 Consignor: SINOSTEEL INTERNATIONAL HOLDING COMPANY LIMITED

品名 Description of Goods: IRON ORE FINES

报检数量/重量 Quantity/Weight Declared: **51,580.0WMT/**46,354.950DMT

标记及号码 Mark & No.: N/M

合同号 Contract No.: 09?GMY-JLC0566-ZY12-HK

发票号 Invoice No.: 09HKF08?0027

提单或运单号 B/L or Way Bill No.: 01

到货地点 Place of Arrival: FANGCHENG CHINA

启运地 Place of Despatch: PARADIP, INDIA

到货日期 Date of Arrival: 24 AUG.2009

卸毕日期 Date of Completion of Discharge: 26 AUG.2009

运输工具 Means of Conveyance: M.V "THERMIDOR"

检验日期 Date of Inspection: 24 AUG - 11 SEP.2009

检验结果 RESULTS OF INSPECTION

Representative samples were taken according to GB2007.1-87 and inspected as per Standards GB/T10322.5-2000, GB/T6730.5-2007, GB/T10322.7-2004 and GB/T6730.63-2006 etc with results as follows:

Fe	63.20%
[illegible]	[illegible]
[illegible]	3.06%
P	[illegible]
S	[illegible]
Moisture	[illegible]
Size	Over 10 mm [illegible]
	Below 0.15 mm [illegible]

Place of Issue: FANGCHENG CHINA

Date of Issue: 14 SEP.2009

Authorized Officer

0291016

Which shows that the Fe content is 63.20% and the samples drawn by the Customs, the Test Reports, which are available on record, are also extracted herein below :

Chemical Laboratory
Custom House
Calcutta 700 001

Lab No- 1665/26 E-156
27/10/10

C.B.R CUSTOMS REVISED
Paradeep Port Office
Registration No
Date
T.M NO 112 10-11
DATE 20.08.2010

TEST MEMO

The Following samples are forwarded for favor of analysis as to :-

1. Whether it is Iron Ore Fines ?
2. Nature & Composition
3. Percentage of Moisture
4. Whether Fe content is more then 64% ?

CUSTOM HOUSE PARADEEP
DATE

THE ASST. COMMISSIONER OF
CUSTOMS, CUSTOM HOUSE, PARADEEP

Particulars of Exporter

Name of the Exporter and address	SERAJUDDIN & CO PVT LTD. METRO CLASSIC BUILDING,ROOM NO.F/2 1ST FLOOR,# 352,SAHEED NAGAR BHUBANESWAR-751007
Name and address of the clearing agents	THE LIBERTY MARINE SYNDICATE (P) LTD PARADIP.
Name of the Vessel Rot. No. & Date	M.V. OCEAN STAR. EXP / 312 / 2010 , DT. 18.08.2010 S/B. No.000249/IOF/2010-11 , DT.20.08.2010
Marks and Number of the Consignment	NIL, IN BULK
Country of Origin	INDIA

Number of Samples	Description of the goods including Brand Name	Result of the test
01(ONE)	IRON ORE FINES	

Analysis returned to the Asst. Commissioner on..................
And the result are as shown above

Chemical Examiner/ Dy. Chief Chemist

Laboratory
Date :-

M/s. SERAJUDDIN & Co. PVT. LTD.
AUTHORISED SIGNATORY

245

Which shows that Fe content is less than 64%.

Lab No: 1665/26E-156 Dt. 07-10-10

S/B No- 000246/15F/2010-11 Dt. 20-08-2010

Report:- The sample is in the form of brownish small lumps and coarse powder. It is essentially composed of oxides of Iron together with associated other metallic oxides and silicious matter.

Total Iron content: 59.5 % by wt. on dry Basis

Moisture Content = 5.6 % by wt.

NOTE:- The particle size of the sample is within 10 m.m which conforms to fine as defined in IS 1405-1982

Sealed remnant may be collected from the laboratory within a fortnight.

21.10.2010

A.C.E

21/10/10

CE-I.

246

10. It is evident from the record that at the time of export of goods, pre-shipment certificate was produced by the appellants showing that the Fe content is less than 64% and samples were drawn by the Customs authorities and got tested. CRCL Certificate also certified that Fe content is less than 64% and the Certificate of Analysis also shows that Fe content is less than 64%.

11. The case of the Revenue is that the periodic dispatch report and form L issued by Deputy Director of Mines, shows that Fe content in some cases is more than 64%, although which roughly between 63.14 to 64.70%. On the basis of that, the Revenue made an allegation that Fe content in the goods exported by the Merchant Exporters, is more than 64%. It is also on record that all Iron Ores and Fines extracted by the appellants, the Mine Owners supplied to the Merchant Exporters were stacked at Port and from the export goods, samples were drawn, which shows that Fe content is less than 64%. The said fact has not been denied with cogent evidence. In that circumstances, the Periodic Dispatch Report, Form-L, cannot be authentic documents to show that Fe content is more than 64% as held by this Tribunal in the case of Indo Export House Vs. Commissioner of Central Excise, Ghaziabad reported in 2004 (168) ELT 142 (Tri.-Del.) wherein it has been held that the relevant time to raise dispute as to quantity or value of export is at the time of export when the goods were tendered for Customs examination and not afterwards. In the above cited case, this Tribunal has observed as under:

*"**5.** We have perused the records and have considered the submissions made by both sides. The allegations and counter-allegations are of no relevance to the determination of the issue raised in this case. The consignments were duly exported after Customs examination. These handicrafts are regular items under export. If there was a dispute about the quantity or value of exports, the time to raise them was when the goods were tendered for export. It is unfortunate that, instead of doing so, proceedings had been initiated belatedly and concluded with half-hearted allegations, of fictitious export, overvaluation, bogus buyers, etc. That too with the simultaneous finding that overvaluation is not proved. This only casts doubts about the capacity of the Customs organisation to deal with matters competently and responsibly. Be that as it may, the untenability of the present order becomes clear to the mind on a mere perusal of Rule 16A of the Drawback Rules, the Rule relied upon by the Commissioner for passing the order. We may read the rule :*

> *"16A. **Recovery of amount of Drawback where export proceeds not realised. -** (1) Where an amount of drawback has been paid to an exporter or a person authorised by him (hereinafter referred to as the claimant) but the sale proceeds in respect of such export goods have not been realised by or on behalf of the exporter in India within the period allowed under the Foreign Exchange Regulation Act, 1973 (46 of 1973), including any extension of such period, such drawback shall be recovered in the manner specified below.*
>
> *(2) On receipt of relevant information form the Reserve Bank of India, Assistant Commissioner of Customs or Deputy Commissioner of Customs shall cause notice to be issued to the exporter for production of evidence of realisation of export proceeds within a period of thirty days from the date of receipt of such notice and where the exporter does not produce such evidence within the said period of thirty days, the Assistant*

Commissioner of Customs or Deputy Commissioner of Customs shall pass an order to recover the amount of drawback paid to the claimant and the exporter shall repay the amount so demanded within sixty days of the receipt of the said order :

Provided that where a part of the sale proceeds has been realised, the amount of drawback to be recovered shall be the amount equal to that portion of the amount of drawback paid which bears the same proportion as the portion of the sale proceeds not realised bears to the total amount of sale proceeds:

(3) ....

(4) Where the sale proceeds are realised by the exporter after the amount of drawback has been recovered from him under sub-rule (2) or sub-rule (3) and the exporter produces evidence about such realisation within one year from the date of such recovery of the amount of drawback, the amount of drawback so recovered shall be repaid by the Assistant Commissioner of Customs or Deputy Commissioner of Customs to the claimant."

12. Further, in the case of Bagadiya Brothers Private Limited Vs. Commissioner of Customs & Central Excise, Visakhapatnam-IV reported in 2010 (249) ELT 387 (Tri.-Bang.), this Tribunal has held that once test report has been produced by the exporter at the time of export from reputed laboratory showing Fe content entitling them to the benefit of Notification No.62/2007-Cus dated 03.05.2007, the test conducted after nearly one month and found that the percentage of iron content was increased, cannot be relied upon.

13. Admittedly, in this case, the Merchant Exporters produced a number of Inspection Certificates showing Fe content is less than 64%

and the samples were drawn from the exported goods by the Customs Authorities and the test report obtained also shows that the Fe content is less than 64%. Moreover, the importer of the said goods located outside India also got tested the goods before un-loading, which also shows that Fe content is less than 64%. At the time of export of the goods, the appellants produced the necessary documents to ascertain the Fe content of the exported goods. As per the test report, the Fe content is less than 64%. In that circumstances, the proceedings initiated by the authorities below, are not sustainable against the appellants. Moreover, the Merchant Exporters have procured "Iron Ore Fines" not only from M/s Serajuddin & Company but also from other suppliers, namely, M/s Shah Brothers, M/s Thakur Prasad Sao & Sons Pvt. Ltd. (Mine Owner) M/s S.P. Minerals & Logistics, M/s R.K. Behuria. M/s. Core Minerals. M/s Satguru Metals, M/s Padma Logistic and Khanji (P) Ltd.. M/s Balaji Ispat, M/s Gopi Krishna Minerals & Metals (P) Ltd., M/s S.N. Mohanty, M/s Feraz Enterprises Pvt. Ltd., M/s Gitarani Mohanty, M/s Kamaljeet Singh Ahluwaila & Others. All "Iron Ore Fines" procured from the above suppliers, were stacked at one place and it has become a lot and the said lot has been exported by the Merchant Exporters, which are having Fe content less than 64%. Therefore, the allegation by the Revenue that in the goods exported by the Merchant Exporters, Fe content is more than 64%, is not sustainable.

14. Accordingly, <u>the goods which has been exported by the Exporters are not liable for confiscation under Section 113 of the Customs Act,</u>

1962. Consequently, neither redemption fine nor penalty is imposable on the Exporters and their Directors.

15. Further, we find that the suppliers/traders/mine owners, have supplied the goods, which were ultimately tested by way of various inspection certificates and the Customs Authorities showing the Fe content is less than 64%.

16. In that circumstances, no penalties can be imposed on the suppliers/traders/mine owners and their partners who are not the exporters.

17. Therefore, the impugned orders deserve no merit, hence, are set aside.

18. In the result, the appeals are allowed with consequential relief, if any.

(Pronounced in the open court on **15.07.2024**)

Sd/

(Ashok Jindal)
Member (Judicial)

Sd/
(K.Anpazhakan)
Member (Technical)

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