IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH - COURT NO.2

Customs Miscellaneous Application No.75239 of 2022 (EH)
(On behalf of Appellant)

Customs Miscellaneous Application No.75195 of 2022 (Stay)
(On behalf of Appellant)

Customs Appeal No.75455 of 2022
(On behalf of Appellant)
And

Customs Cross Objection No.75254 of 2022
(On behalf of Appellant)

(Arising out of Order-in-Appeal No.36-48/CUS/CCP/2022 dated 24.03.2022 passed by Commissioner(Appeals), GST, Central Excise & Customs, Bhubaneswar.)

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

...Appellant

VERSUS

M/s. S.M. Niryat Private Limited

.....Respondent

(402, Sagar Trade Cube, S.P.Mukherjee Road, Kolkata-700026, West Bengal.)

WITH

(i) Customs Miscellaneous Application N.75238 of 2022 (EH), Customs Miscellaneous Application No.75196 of 2022 (Stay), Customs Appeal No.75456 of 2022 & Customs Cross Objection No.75255 of 2022 (Commissioner of Customs (Preventive), Bhubaneswar Vs. M/s. S.M. Niryat Private Limited); (ii) Customs Miscellaneous Application N.75237 of 2022 (EH), Customs Miscellaneous Application No.75197 of 2022 (Stay), Customs Appeal No.75457 of 2022 & Customs Cross Objection No.75256 of 2022 (Commissioner of Customs (Preventive), Bhubaneswar Vs. M/s. S.M. Niryat Private Limited); (iii) Customs Miscellaneous Application N.75236 of 2022 (EH), Customs Miscellaneous Application No.75198 of 2022 (Stay), Customs Appeal No.75458 of 2022 & Customs Cross Objection No.75257 of 2022 (Commissioner of Customs (Preventive), Bhubaneswar Vs. M/s. S.M. Niryat Private Limited); (iv) Customs Miscellaneous Application N.75235 of 2022 (EH), Customs Miscellaneous Application No.75199 of 2022 (Stay),

Customs Appeal No.75459 of 2022 & Customs Cross Objection No.75258 of 2022 (Commissioner of Customs (Preventive), Bhubaneswar Vs. M/s. S.M. Niryat Private Limited); (v) Customs Miscellaneous Application N.75234 of 2022 (EH), Customs Miscellaneous Application No.75200 of 2022 (Stay), Customs Appeal No.75460 of 2022 & Customs Cross Objection No.75259 of 2022 (Commissioner of Customs (Preventive), Bhubaneswar Vs. M/s. S.M. Niryat Private Limited); (vi) Customs Miscellaneous Application N.75233 of 2022 (EH), Customs Miscellaneous Application No.75201 of 2022 (Stay), Customs Appeal No.75461 of 2022 & Customs Cross Objection No.75260 of 2022 (Commissioner of Customs (Preventive), Bhubaneswar Vs. M/s. S.M. Niryat Private Limited); (vii) Customs Miscellaneous Application N.75232 of 2022 (EH), Customs Miscellaneous Application No.75202 of 2022 (Stay), Customs Appeal No.75462 of 2022 & Customs Cross Objection No.75261 of 2022 (Commissioner of Customs (Preventive), Bhubaneswar Vs. M/s. S.M. Niryat Private Limited); (viii) Customs Miscellaneous Application N.75231 of 2022 (EH), Customs Miscellaneous Application No.75203 of 2022 (Stay), Customs Appeal No.75463 of 2022 & Customs Cross Objection No.75262 of 2022 (Commissioner of Customs (Preventive), Bhubaneswar Vs. M/s. S.M. Niryat Private Limited); (ix) Customs Miscellaneous Application N.75230 of 2022 (EH), Customs Miscellaneous Application No.75204 of 2022 (Stay), Customs Appeal No.75464 of 2022 & Customs Cross Objection No.75263 of 2022 (Commissioner of Customs (Preventive), Bhubaneswar Vs. M/s. S.M. Niryat Private Limited); (x) Customs Miscellaneous Application N.75229 of 2022 (EH), Customs Miscellaneous Application No.75205 of 2022 (Stay), Customs Appeal No.75465 of 2022 & Customs Cross Objection No.75264 of 2022 (Commissioner of Customs (Preventive), Bhubaneswar Vs. M/s. S.M. Niryat Private Limited); (xi) Customs Miscellaneous Application N.75228 of 2022 (EH), Customs Miscellaneous Application No.75206 of 2022 (Stay), Customs Appeal No.75466 of 2022 & Customs Cross Objection No.75265 of 2022 (Commissioner of Customs (Preventive), Bhubaneswar Vs. M/s. S.M. Niryat Private Limited); (xii) Customs Miscellaneous Application N.75227 of 2022 (EH), Customs Miscellaneous Application No.75207 of 2022 (Stay), Customs Appeal No.75467 of 2022 & Customs Cross Objection No.75266 of 2022 (Commissioner of Customs (Preventive), Bhubaneswar Vs. M/s. S.M. Niryat Private Limited);

(Arising out of Order-in-Appeal No.36-48/CUS/CCP/2022 dated 24.03.2022 passed by Commissioner(Appeals), GST, Central Excise & Customs, Bhubaneswar.)

APPEARANCE

Shri Manish Mohan, Addl.Commr.(Authorized Representative) for the Appellant (s)/Revenue
Shri Alok Agarwal, Advocate for the Respondent (s)

CORAM: HON'BLE SHRI SANJIV SRIVASTAVA, MEMBER(TECHNICAL)
HON'BLE SHRI P.DINESHA, MEMBER(JUDICIAL)

MISCELLANEOUS ORDER NO. 75201-75239/2022
FINAL ORDER NO. 75409-75421/2022

DATE OF HEARING : 28 July 2022
DATE OF DECISION : 28 July 2022

P. DINESHA :

This batch of early hearing Application Nos.75227-75239 of 2022 is filed by the Revenue and they arise out of Customs Appeal Nos.75455-75467 of 2022. The said Appeals have been filed against a common Order-in-Appeal No.36-48/CUS/CCP/2022 dated 24.03.2022 passed by Commissioner(Appeals), GST, Central Excise & Customs, Bhubaneswar.

2. Heard both sides on the early hearing applications; Shri Manish Mohan, Ld.Addl.Commissioner (Authorized Representative) appearing for the Revenue-Appellant would submit at the outset that the only issue that arises in the Revenue's Appeals for consideration of the Bench is as to the adjudication of shipping bills excluding moisture or including moisture, since moisture was also claimed to be an impurity. He would also fairly submit that in the case of M/s.Vedanta Ltd. Vs. Commissioner of Customs (Export), Kolkata (Final Order No.75404/2022 dated 28.07.2022) passed by this very Bench, order has been passed setting aside the valuation and remanding the matter back to the original/adjudicating authority to pass a speaking order after following the guidelines laid down by the Hon'ble Supreme Court in the case of Union of India Vs. Gangadhar Narsingdas Aggarwal reported in 1997 (89) E.L.T. 19 (S.C.).

3. Per contra Shri Alok Agarwal, Ld.Advocate appearing for the Respondent would submit that he has no objection for granting early hearing, and also submits that all that the Commissioner(Appeals) has done vide impugned orders is that he has remanded the case back to the original/adjudicating authority with a direction to pass fresh orders taking into consideration the decision of Hon'ble Apex Court in the case of Gangadhar Narsingdas Aggarwal (supra) and also Board's Circular No.4/2012-Cus dated 17.02.2012.

4. Having heard the rival contentions, we are of the considered opinion that the matters could be taken up for final disposal itself and hence, we grant early hearing. With the consent of both the parties the cases were taken up for final hearing.

5. We find that the matter lies on a very narrow compass inasmuch as, the first appellate authority has only remanded the matters to the adjudicating authority for fresh decision, to follow the guidelines issued by the Hon'ble Apex Court in the case of Gangadhar Narsingdas Aggarwal (supra) and also the Board's Circular No.4/2012-Cus dated 17.02.2012 ibid. Further, in the case of M/s. Vedanta Ltd. (supra), this very Bench has also remanded the matter to the original adjudicating authority to pass a fresh order as per the guidelines issued by the Hon'ble Apex Court in the case of Gangadhar Narsingdas Aggarwal (supra), in so far as valuation is concerned.

6. In view of the above, since the valuation has to be arrived at based on the Fe content in the Iron Ore Fines exported as per the guidelines in the case of Gangadhar Narsingdas Aggarwal (supra) which is the domain of Adjudicating authority and since no such exercise appears to have been done in these cases also, we deem it proper and appropriate to concur with the remand order of the first appellate authority.

7. Consequently, we do not see any justifiable reasons to interfere with the impugned orders since there is no finding on merits given by the First Appellate Authority. Hence, the Department's Appeals cannot be accepted for which reason, the same are dismissed.

Appeals having been disposed of on the above lines, we do not find it necessary to consider the Customs Miscellaneous Application Nos.75195-75207 of 2022 (Stay) filed by the Revenue as well as Customs Cross Objection Nos.75254-75266 of 2022, filed by the Respondent-assessee and hence, the same are held to be disposed of.

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

Sd/

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

Sd/
(P.DINESHA)
MEMBER (JUDICIAL)

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