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

REGIONAL BENCH – COURT NO.2

Customs Appeal No. 75898 of 2014

(Arising out of Order-In-Appeal No.311-317/CUS(Exp)/KOL(P)/2014 Dated 31.03.2014 passed by Commissioner (Appeals), Kolkata)

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

Appellant

VERSUS

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

Respondent

With

(i) Customs Appeal No. 75899 of 2014 (AKS Minerals Vs. Commr. of Customs (Port), Kolkata (ii) Customs Appeal No. 75900 of 2014 (AKS Minerals Vs. Commr. of Customs (Port), Kolkata) (iii) Customs Appeal No. 75901 of 2014 (AKS Minerals Vs. Commr. of Customs (Port), Kolkata) (iv) Customs Appeal No. 75902 of 2014 (AKS Minerals Vs. Commr. of Customs (Port), Kolkata) (v) Customs Appeal No. 75903 of 2014 (AKS Minerals Vs. Commr. of Customs (Port), Kolkata) (vi) Customs Appeal No. 75904 of 2014 (AKS Minerals Vs. Commr. of Customs (Port), Kolkata)

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

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

FINAL ORDER NO.76217-76222 & 76226/2023

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

PER R. MURALIDHAR:

The Appellant AKS Minerals Pvt. Ltd., Kolkata, 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 in terms of P. N. 40/2008 dated 04.08.2008. Being aggrieved, the Appellant filed the Appeals before the Commissioner (Appeals). He has dismissed the Appeals. Being aggrieved, the Appellant is before the Tribunal.

2. The Appellant submits that inspite of going through the Contract Copy with the overseas importer, still the Commissioner (Appeals) has held that the value should be as per wet weight by relying in the case of UOI Vs Gangadhar Narsingdas Agarwal 1997 (89) E. L. T. 19 (S.C.)].

3. Based on the detailed findings of the Commissioner (Appeals), the Authorized Representative of the Revenue prays that the present Appeals filed by the Appellant should be dismissed.

4. The Learned Advocate appearing on behalf of the Appellant 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 OIA (in impugned order), has admitted the fact that the copy of the contract was provided by the Appellant. 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 Gagadhar 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 Appellant has provided the copy of the Agreement with the overseas importer wherein, it is specified that the Appellant 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, 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.*
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> ***7.*** *The Department has challenged the said observation mainly on the ground that the Hon'ble Supreme Court 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 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.*
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> ***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.*
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> *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.*
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> *[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, <u>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]</u>*

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 Tribunals order in Sesa Goa case.

17. We allow the Appeals filed by the Appellant.

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

Sd/-

(R. Muralidhar)
Member (Judicial)

Sd/-
(Rajeev Tandon)
Member (Technical)

Pooja