

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

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 75774 of 2023

(Arising out of Order-in-Appeal No. 69/CUS/CCP/2023 Dated 29.05.2023 passed by Commissioner of Customs (Appeals), Bhubaneswar.)

M/s. Vedanta Ltd.

(Formerly known as Sesa Sterlite Limited/Sesa Goa Limited)

(Sesa Ghor, 20 EDC Complex, Patto, Panji, Goa-403001) ... **Appellant**

VERSUS

Commissioner of Customs (Preventive), Bhubaneswar

(C.R.Building, Rajaswa Vihar, Bhubaneswar-7) ... **Respondent**

APPEARANCE :

Present for the Appellant: CA Mr. Mukesh Laddha assisted by Ms. Nimita
Shaneshah

Present for the Respondent: Mr. Subrata Debnath, Authorised
Representative

CORAM:

HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)

HON'BLE K. ANPAZHAKAN MEMBER (TECHNICAL)

FINAL ORDER NO. 75019/2025

Date of Hearing : 18 December 2024

Date of Pronouncement : 07/01/2025

PER R. MURALIDHAR:

The appellant Vedanta Ltd. , was earlier known as Sesa Goa Ltd. Subsequent to by changing the name of 'Sesa Goa Ltd.', the Company came to be known as 'Sesa Sterlite Limited' and then 'Vedanta Ltd.', as is evidenced by the ROC Certificate provided by the appellant.

2. The appellants have exported Iron Ore during the period 29.02.2008 to 26.03.2008, by way of Two Shipping Bills through Paradeep Port. During this period, the Export Duty was payable either @ Rs.300 PMT if the Fe content is more than 62% or @ Rs.50 PMT if the Fe content is less than 62%. The appellants at the time of clearance, have indicated the DMT as 63.5% with moisture content of 9%,

which would be less than 62%, requiring to pay export duty of Rs.50 PMT. But in order to avoid delay in exports, they have paid Export Duty @ 300 PMT. On 18.05.2009 [acknowledged on 05.06.2009], they have submitted their letter for these Shipping Bills citing there with the relevant Supreme Court’s order and enclosing therewith the Load Port Test Report from the accredited Testing Agency, requesting the Customs officials to Finalize the provisionally assessed Shipping Bills.

3. After this, the case had long history, with no order finalizing the assessment being passed. Finally the OIO was passed on 25.01.2018 rejecting the appellant’s stand on the Fe and on appeal the Commissioner (Appeals) vide OIA dated 29.09.2021 passing the order allowing the appeal and consequent refund being allowed vide OIO dated 08.04.2022. However, no interest was granted for the excess Export Duty paid by the appellant at the time of export. Being aggrieved, the next round of litigation started, wherein the Adjudicating authority has rejected their claim for interest on the ground that the refund was granted within 3 months from the date of refund claim filed on 12.01.2022 consequent to OIA dated 29.09.2021. On appeal, the Commissioner has affirmed the OIO and dismissed the appeal. Being aggrieved the appellant has filed the present appeal.

4. The Ld Chartered Accountant, takes us through the chequered history of the case, by way of a Table showing the chronology of the events, which is reproduced below:

Sequence of events

Sr. No.	Letter Dated	Communication Addressed to / From	Subject / Particular of the Communication	Letter Deposited/ receipt date
1	29.02.2008	Customs	Filing of Shipping Bill No. 01121/IOF/2007-08	29.02.2008
2	29.02.2008	Customs	payment of Export Duty of Rs. 1,26,00,000/-	29.02.2008
3	26.03.2008	Customs	Filing of Shipping Bill No. 001233/IOF/2007-08	26.03.2008
4	28.03.2008	Customs	payment of Export Duty of Rs. 3,49,500/-	28.03.2008
5	18.05.2009	The Deputy Commissioner of Customs, Custom House, Paradip	Request for finalization of provisional assessment and consequential refund of excess duty paid	05.06.2009
6	01.10.2009	The Deputy Commissioner of Customs, Custom House,Paradip	Application under Section 154 of Customs Act, 1962 for correction of error arising from omission to apply law laid down by the Hon'ble Supreme Court in the case of Gangadhar Narsinghdas Agarwal in 1997 (89) ELT	26.10.2009

Sr. No.	Letter Dated	Communication Addressed to / From	Subject / Particular of the Communication	Letter Deposited/ receipt date
			19 (SC)	
7	15.12.2009	The Deputy Commissioner of Customs, Custom House,Paradip	Submission of Case Laws as requested as per the meeting held on 14.12.2009 with Deputy Comm., Paradip.	15.12.2009
8	27.01.2010	Shri. R.K. Samal, Superintendent, Custom House, Paradip	Intimation of Personal hearing attended and request for passing order for rectification u/s Section 154 of Customs Act, 1962 for correction of error arising from omission to apply law laid down by the Hon'ble Supreme Court	29.01.2010
9	05.02.2010	The Deputy Commissioner of Customs, Custom House,Paradip	Intimation of Personal hearing attended and request for passing order for rectification u/s Section 154 of Customs Act, 1962 for correction of error arising from omission to apply law laid down by the Hon'ble Supreme Court	08.02.2010
10	15.02.2010	The Deputy Commissioner of Customs, Custom House,Paradip	Written submissions filed for PH attended	22.02.2010
11	30.03.2010	The Chief Commissioner of Central Excise, Bhubaneshwar	Request for suitable directions for expeditious disposal of above application	
12	05.02.2014	The Asst. Commissioner of Customs, Custom House,Paradip	CC to Commissioner of Customs Reminder of Rectification of Assessment / reassessment	17.02.14
13	19.03.2014	The Asst. Commissioner of Customs, Custom House,Paradip	Reminder of Rectification of Assessment / reassessment	25.03.14
14	11.04.2014	The Asst. Commissioner of Customs, Custom House,Paradip	Copy to Commissioner & Chief Commissioner Reminder of Rectification of Assessment / reassessment	29.04.14
15	01.04.2014	To CPIO	RTI application for supplying Departmental Test reports and outcome of PH on 10.02.10	21.04.14

Sr. No.	Letter Dated	Communication Addressed to / From	Subject / Particular of the Communication	Letter Deposited/ receipt date
16	19.05.2014	To Company	RTI Reply – copy of Customs Test Report have been provided	
17	06.05.2014	The Chief Commissioner, Commissioner & Asst. Commissioner Customs	Representation on inordinate delay in Assessment of Shipping Bills with a request to disposal of long pending request for Assessments	06.05.14 07.05.14
18	02.06.2014	CP Gramm online grievances	Grievances for non-closure of PD ITC Bonds closures and an Pending Final Assessment	02.06.14
19	04.06.2014	Letter to Vigilance	Representation to Vigilance for inordinate delay made by Customs Paradeep, in finalizing assessments and not following law laid down by Hon'ble Supreme Court	...
20	30.06.2014	Reply from Vigilance	Reply to Company's representation that the matter has been forwarded to office of Chief Commissioner	07.14
21	08.07.2014	To Company-Reply from Asst. Commissioner	Information letter (non-speaking order) for finalization of both Shipping Bill Nos	14.07.14
22	September, 2014	To Comm. Appeal	As the Asst. Comm. In spite of our several letter and earlier direction of Comm. Appeals, did not consider request of implementation of Hon'ble Supreme Court order even for passing a speaking order, the Company has filed an Appeal before the Comm. Appeals for getting reliefs.	
23	15.07.15	To Comm Appeals	Attended Personal Hearing	15.07.15
24	31.08.16	Order of Commissioner Appeals	The Commissioner Appeals vide order 18/CUS/CCP/2016 dated 30.08.2016 set aside the Order C.No. VIII-CUS 51 (299)/EXP/PDP/08/3160 dated 08.07.2014 and remitted back the matter to the Deputy Commissioner of Customs for a fresh decision with the directions that " <i>all submissions as referred to have been made to the AC/DC of Customs Paradeep in this appeal including further submission, if any, to be made hereafter, be considered and a reasoned speaking order be passed following the principles of natural justice within a period of two months from the date of the Communication this order</i> ".	19.09.16

Sr. No.	Letter Dated	Communication Addressed to / From	Subject / Particular of the Communication	Letter Deposited/ receipt date
25	26.10.2016	The Asst. /Dy. Commissioner of Customs, Custom House, Paradip	Requesting to implement Commissioner Appeals order for issuing a speaking order in line with Hon'ble Supreme court order and earlier issued refund claims.	07.09.16 08.09.16
26	23.01.2017	The Asst./Dy. Commissioner of Customs, Custom House, Paradip Copy to The Commissioner and Chief Commissioner	Requesting to implement Commissioner Appeals order for issuing a speaking order in line with Hon'ble Supreme court order and earlier issued refund claims.	01.02.2017
27	21.02.2017	To Company	Dy. Comm-Requested Company to submit again self-attested documents for issuing Assessment Order.	28.02.17
28	03.03.2017	The Asst. Commissioner of Customs, Custom House, Paradip	Reply to his request, submitted all the relevant documents again with a request questing to implement Commissioner Appeals order for issuing a speaking order in line with Hon'ble Supreme court order and earlier issued refund claims.	
29	15.12.2017	To Company	Letter issued by Asst. Commissioner for getting a detailed note on ASTM-Formula	22.12.2017
30	04.01.2018	The Asst. Commissioner of Customs, Custom House,Paradip	Detailed Submission on ASTM D formula, with a Request to implement Commissioner Appeals order for issuing a speaking order in line with Hon'ble Supreme court order and earlier issued refund claims.	
31	25.01.2018	Assessment Order	1. The Assistant Commissioner, Customs Division, Paradeep ("herein after referred to as "the AC"), after having a long follow up of more than 16 months, has rejected the refunds vide Order No. AC/CUS/PDP/B-Cus(Prv.)/24/2017 dated 25.01.2018, wherein to save the inefficiency of his office, in para 3 he has held as follows: a) The exporter has not provided documentary evidence in respect of Fe and Moisture Content at 63.50% and 9.00% respectively at the time of provisional assessment. b) The exporter didn't submit any certificate of analysis from their Surveyor/ Assayer – Quality Services	09.02.18

Sr. No.	Letter Dated	Communication Addressed to / From	Subject / Particular of the Communication	Letter Deposited/ receipt date
			and Solutions Pvt. Ltd. c) Test results of the samples sent under T.M. No. 624/2007-08 dated 29.02.2208 from the Customs Laboratory, Kolkata shows the total Iron content is 63.7% by weight and moisture is 0.8% by weight. Accordingly, the AC has finalized the provisional assessment in respect of the two shipping bills and ordered the redemption of the PD-cum-Test bond. d) Certificate issued by the Surveyor/ Assayer – Quality Services and Solutions Pvt. Ltd. under certificate No. QSS/02/01/01406 dated 31.03.2008 in respect of MV Thrasyvolous V showing Fe and Moisture Content 63.76% and 6.20% cannot be considered as the same is in respect of export of 65,200 WMT of iron ore fines exported from Haldia and Paradeep Port both, whereas the Quantity of the one shipping bills 22,035 WMT was loaded and exported from Haldia so Prima Facie not related to the shipping bill under consideration through Paradeep Port. So test report is not a credible evidence. e) According to the AC, as the provided test report does not provide any proof as to the percentage of Moisture and Fe content present in the iron ore Fines at the time of export. f) The international conversion formula ASTM 3180-2002 for conversion of Fe on dry basis was referred to the office of the joint director Chemical Laboratory, Customs House, 15/1, strand Road, Kolkata and office of the Principal Commissioner of Customs House Laboratory, Visakhapatnama for clarification and the Chemical Examiner, Kolkata has reported that the laboratory has been using IS1493-1959 as a method of reporting iron ore and the case law Union of India vs. Gangadhar Narsingdas Aggarwal 1997-89-ELT-19-SC is related to conclude the form of iron ore whether Lumps or fines and not connected with the WMT basis.	

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			As per Chemical Examiner, Custom House, Visakhapatnam, ASTM- 3180-2002 deals with the standard practice for calculating coal and coke analysis and not related to iron content. g) The AC accepted the Appellant's contention that as per Notification No. 62/2007-Cus dated 03.05.2009, the Fe content in iron ore fines has to be determined with reference to the Moist weight of iron ore fines i.e. the condition in which the iron ore/ iron ore fines are exported/ receipt. However, he also accepted that the Fe content in moist condition can be arrived by adopting a standard formula for conversion from DMT to WMT basis. h) The AC however didn't consider the ASTM-3180-2002 formula, according to him the said formula is used for calculating Coal and Coke analysis and the certificate No. QSS/02/01/014046 dated 31.03.2008 does not mention WMT basis nor any conversion formula and the subsequent communication dated 14.02.2011 was irrelevant. i) The AC however accepted the following formula for conversion of DMT to WMT referred in Order-in-Original 198 dated 25.08.2014 of the Commissioner of Customs Mormugao port and Order-in-Original no. 04/2010(Com) dated 28.04.2010 issued by the Commissioner of Customs, Mangalore. Iron content = $\frac{\text{Fe} \times (100 - M)}{100}$ Where Fe is %age of iron content on dry basis and M is the Moisture content in the sample. j) Considering the Test report of the Chemical Examiner the Fe content was 63.7% and Moisture 0.8% and applying the above Formula the AC came to a conclusion that the percentage Fe in respect of the iron ore exported vide above shipping bills was 63.19% and the same was liable	

Sr. No.	Letter Dated	Communication Addressed to / From	Subject / Particular of the Communication	Letter Deposited/ receipt date
			to duty @ INR 300 PMT and held that the assessment of the shipping bill done earlier was correct.	
32	04.04.2018	The Comm. Appeals	Appel before the Commissioner Appeals	
33	05.03.2020	Chairman CBIC/ Chief Commissioner	Request to CBIC for appointing Commissioner Appeals	
34	20.11.2020	PH Letter	PH letter from office of Commissioner Appeals	30.11.20
35	07.12.2020	PH Attended	Submission made with a request to allow Appeal	07.12.20
36	13.08.2021	PH Letter	PH letter from office of Commissioner Appeals	19.08.21
37	26.08.2021	PH Attended	Submission made with a request to allow Appeal	26.08.21
38	29.09.2021	Order in Appeal	Order issued by the Commissioner Appeals accepting Company's contention and allowed refunds, but interest has not been allowed.	29.09.21
39	30.09.2021	To Assistant / Dy. Commissioner, Paradeep	Submission of Order in Appeal with request to implement and sanction refund	30.09.21
40	06.01.2022	To Assistant / Dy. Commissioner, Paradeep	Reminder letter	12.01.22
41	12.01.2022	Refund claim Application	In Form 102	12.01.22
42	09.02.2022	To Assistant / Dy. Commissioner, Paradeep	Reminder letter to implement Commissioner Appeals and allow refunds with escalation to The Commissioner and Chief Commissioner	09.02.22
43	08.04.2022	To Company by office of Assistant / Dy. Commissioner, Paradeep	Refund sanction order allowing refund claim	08.04.22
44	12.04.2022	Receipt of refund cheque	Refund received	12.04.22
45	23.05.2022	To Assistant / Dy. Commissioner, Paradeep Copy to Commissioner	Request Letter dated 13.09.2024 submitted to Assistant Commissioner copy to Commissioner for interest @12% against retaining illegally the huge money of Rs. 1.08 Crs for more than 15 years without authority of law.	30.05.2022

Sr. No.	Letter Dated	Communication Addressed to / From	Subject / Particular of the Communication	Letter Deposited/ receipt date
		of Customs		
46	02.08.2022	To Company	SCN for rejecting the interest claim	11.08.2022
47	26.09.2022	To Assistant / Dy. Commissioner, Paradeep	Reply to SCN	26.09.2022
48	12.01.2023	PH against the Interest Claim	PH attended and submission made in justification of Interest Claim.	12.01.2023
49	13.02.2023	Rejection of Interest Claim	OIO No. EXP/REF/03/PDP/2023 dated 13.02.2023 issued rejecting the in claim basis refund issued within 3 months from the date of Application by the Company.	22.02.2023
50	19.04.2023	Appeal before 1 st Appeal Authority	Appeal against OIO dated 13.02.2023 filed before the Commissioner of Customs (Appeals)	23.04.2023
51	18.05.2023	Personal Hearing before FAA	PH attended describing justification over interest claim.	18.05.2023
52	31.05.2023	Order in Appeal	OIA No. 69/CUS.CCP/2023 dated 29.05.23 is issued rejecting interest basis refund issued within prescribed time limit from date of application.	31.05.2023
53	19.10.2024	Appeal before Hon'ble CESTAT	Appeal filed before CESTAT – C/75774/2023	25.10.2024
54	10.12.2024	Misc Application for Early Hearing	EHP Allowed vide order dated 12.12.2024	12.12.2024
55	18.12.2024	PH before Hon'ble CESTAT	PH attended by CA Mukesh Laddha	

5. The Ld CA submits that having no response whatsoever was received from the Dept. to their letter dated 18.05.2009 [filed on 5.6.2009], to finalize their assessment based on all the documents submitted therein. Then as a matter of abundant precaution, the appellant vide their letter dated 01.10.2009 [submitted on 26.10.2009 [after 5 months from their initial letter dated 5.6.2009], sought Rectification of Shipping Bills in terms of Section 154 of the Customs Act 1962. They attended the PH granted by the Supdt – Customs House on 27.01.2010 and attended the PH granted by the Dy Commissioner – Customs on 05.02.2010. Written submissions were made on 15.02.2010. Thereafter, no order was passed

by the Adjudicating authority during the next four years inspite of regular visit and oral follow up with his office. Thereafter, the appellant started putting up their follow-up by way of letters addressed to the AC/Commissioner / Chief Commissioner /Vigilance / CPGRAM etc. by way of letters dated 05.02.2014, 19.03.2014, 11.04.2014, 01.04.2014, 06.05.2014, 02.06.2014, 04.06.2014, as has been explained in the above Sequence Table. After such regular and vigorous follow-up, finally a non-speaking Order dated 08.07.2014 was issued intimating finalisation of S/Bills without taking the submission made by Appellants on record in a way rejecting the request of the appellant. Being aggrieved, the appellant filed their Appeal before the Commissioner (Appeals) in September 2014 and attended personal hearing on 15th September 2014. The Commissioner (Appeals), vide OIA dated 31.08.2016, remanded the matter back to the Adjudicating authority with the directions that *"all submissions as referred to have been made to the AC/DC of Customs Paradeep in this appeal including further submission, if any, to be made hereafter, be considered and a reasoned speaking order be passed following the principles of natural justice **within a period of two months** from the date of the Communication this order"*. Finding that the proceedings have not commenced, the appellants filed their follow-up letters on 26.10.2017 and 23.01.2017. On 21.02.2017, the Asst Commissioner sought self-attested documents, which were submitted on 03.03.2017. After more than 9 months from the submissions of these documents, the AC's office on 15.12.2017 sought the details of ASTM Formula, which was submitted on 04.01.2018. Finally vide OIO dated 25.01.2018 [received by appellant on 09.02.2018], the Asst Commissioner, rejected the appellant's claim about the moisture content, and held that the export duty was correctly paid at the time of export. Being aggrieved the appellants filed their appeal before the Commissioner (Appeals) on 04.04.2018. After 9 months, the PH was granted and was attended on 07.12.2020. But no OIA was passed. Once again PH was granted and attended on 26.08.2021. After this the OIA dated 29.09.2021, the Commissioner (Appeals) passed the order upholding the appellant's submissions. He ordered for re-determination of the Export Duty @Rs.50 PMT as against the Export Duty of Rs.300 PMT paid by the appellant and consequent to re-determination of Export Duty @50/- PMT, he

allowed the consequential refund @Rs. 250/- PMT, which comes to Rs. 1,07,91,250/-. Reminder letters were submitted on 30.09.2021 and 06.01.2022, very clearly stating that the refund being sought towards implementation of the OIA. Due to the compulsion of the Dept., the appellant filed the refund claim under Form 102 on 12.01.2022. The Asst. Commissioner has taken this date as the date of accrual of the refund claim, ignoring the long follow up for many years and granted the refund of only the Export Duty, The OIO dated 08.04.2022 was passed sanctioning the refund of the Export Duty only without any interest thereon. A request letter dated 23.05.2022 was submitted on 30.05.2022, seeking interest on the refund of Export Duty sanctioned. The Dept. issued a Show Cause Notice , seeking to know as to why the interest being sought should not be rejected. After the due process, OIO No. EXP/REF/03/PDP/2023 dated 13.02.2023 was passed rejecting the in claim since the refund was issued within 3 months from the date of Application by the Company. On appeal, the Commissioner (Appeals) vide the impugned OIA dated 31.05.2023 has held that the Adjudicating authority has correctly denied the interest since the refund was granted within three months from the date of finalization of the Assessment in terms of Section 18(4) of the Customs Act, 1962. Being aggrieved the present appeal has been filed by the appellant.

6. The Ld. Consultant submits that the above chronological details would clarify that though all the necessary documents towards the finalization was available with the Dept. by way of the letter dated 18.05.2009 [submitted on 5.6.2009], the Dept. has delayed the finalization / rectification for all these years. Only by of OIA dated 29.09.2021, it was the Commissioner (Appeals), who had in detail analyzed the entire details, considered the Load Test Reports filed by the appellant in 2009, compared the same with the Discharge Port Reports, Bank Realization, the Revenue's claim about the CRCL's report, non-issuing of these CRCL's Report to the appellant etc. He considered the formula given by the Hon'ble Supreme Court in the Gangadhar Narsinghdas case and has finally arrived at the conclusion that the Fe content was less than 62%. Accordingly, he has re-determined the Export Duty @ Rs.50 PMT.

7. As can be observed from the chronological table, there was complete lull from the Dept's side after the PH was conducted on 05.02.2010 and written submissions were made on 15.02.2010. No action was taken for the next 4 years. The appellant started writing letters to various officials from 5.2.2014 to 3.6.2014. Only thereafter, the non-speaking order dated 08.07.2014 was issued, rejecting the appellant's claim. The Ld CA submits the Assessment is required to be done, within 6 months in a time-bound manner as per Customs Manual Chapter 7 Para 3.1.

8. In the present case, the details given above, would show that the appellant has given all the details by 5.6.2009, enabling the Revenue to finalize the assessment. However, neither their request for finalizing the assessment, nor their subsequent request for 'Rectification' in terms of Section 154 of the Customs Act 1962, made on 01.10.2009 [submitted on 26.10.2009], was seriously considered. Even after conducting two Personal Hearings on 27.01.2010 and 05.02.2010, no further action was taken to finalize the assessment or carry out the rectification. After a gap of more than 4 and ½ years, the non-speaking order was passed on 08.07.2014. Because of this, the appellant was once forced take up the matter with the Commissioner (Appeals). The Commissioner (Appeals) vide OIA dated 18/CUS/CCP/2016 dated 30.08.2016, has held as under :

6.2. As rightly pointed out by the appellant in all of their letters addressed to the department, find that, they are pursuing their case since 2009 with request to finalise the assessments and grant refund, if any, admissible to them. Apparently no action has been taken on their letters till the issuance of the order which has not addressed the appellant's grievance. I find that in all of their correspondences, their only grievance was that the customs duty on export of iron ore fines should be computed in terms of Notification No. 62/2007-cus dated 03.05.2007 read with C.B.E 's Circular No. 4/2012-cus dated 17.02.2012 and Hon'ble Supreme Court's judgement in the case of VOI vs. Gangadhar Narashingadas Agarwal, 1997(19) ELT 19 (SC). The order dated 08.07.2014 has not made any discussion as to the applicability or otherwise of the Board's Circular and Supreme Court's judgment. On this count, the impugned order may not be held to be a reasoned order.

6.3. The Assistant Commissioner, Customs House Paradip is to have supplied the copies of test memo of that Customs Laboratory to the appellant vide letter PDP/ 2013 dated 19.04.2014 pursuant to their RTI application dated 01.04.2014. As per the appellant's submissions, the samples pertaining to these two shipping bills were tested by the Customs Laboratory and the Govt. approved laboratory. The test results of the samples issued by both the laboratories are identical in all respect. The Assessing officer has not taken this material evidences into account nor recorded any finding

there against even if these material evidences were within his knowledge. In this view of the matter, the order of finalization dated 08.07.2014 on no account could be held a reasoned speaking order. Since the disputed points have not been properly appreciated and decided the lower authority, the case has to the said authority for an appropriate decision and I do so.

6.5. As submitted by the appellant, they have obtained the copy of the test report of the Cust Laboratory from the department on 19.04.2014 in which the percentage of the Content on DMT basis and moisture were 63.7% and 6.2% respectively. That report, the analysis of report of the Government Approved Laboratory also certifies the existence of Fe Content and moisture at the same percentage. The Assessing officer has not made any decision in this regard in his Order-in-Original dated 08.07.2014. On a careful heading of the decision of the Hon'ble Apex Court in the case of Gangadhar Narashingadas Agarwal supra and Board's circular No.4/2012-Cus dated 17.02.2012, the rate of customs duty on export of Iron Ore should be computed on WMT basis i.e. 'as receipt basis and not on DMT basis. I find that the Asst. Commissioner has not taken any decision on the appellant's submissions advanced in their earlier correspondences. Therefore, I hold that the order dated 08.07.2014 cannot be held to be a speaking order in terms of Section 17(5) ibid. The case has to be remitted to the Lower Authority for a fresh decision.

07. In view of my discussion and findings supra, I order as under:-

- (i) The Order-in-Original communicated under C.No.VIII-Cus-51(299)Expenses/PDP/ 08/3160 dated 08.07.2014 is set aside and remitted back to the Deputy Commissioner, Customs, Paradip for a fresh decision.
- (ii) All the submissions as referred to have been made to the AC/DC of Customs, Paradip in this appeal including further submission, if any, to be made hereafter, be considered and a reasoned speaking order be passed following the principles of natural justice within a period of two months from the date of communication of this order.

9. In spite of his OIA dated 31.08.2016 with his directions to complete the proceedings within 2 months, no action was taken up to finalize the assessment, the OIO was passed only on 25.01.2018, with delay of more than 15 months from the time frame given by the Commissioner (Appeals). The above details would show that the appellant was following up very regularly during the entire period for expeditious finalization.

10. The Ld. CA submits in the OIO dated 25.01.2018, the Adjudicating Authority has not followed the directions of the Commissioner (Appeals), which has resulted in further delay in getting the proper relief by the appellant by of the subsequent OIA dated 29.09.2021. During the intervening period, there was time, when there was no Commissioner (Appeals) to even take up the appeal and the appellant had

submitted a letter to the CBEC requesting for appointing the Commissioner (Appeals) vide their letter dated 05.03.2020, when no hearing was granted after the appeal was filed on 04.04.2018

11. He submits that as per the chronology of the event described above, the appellant has been following up for finalization /re-assessment / rectification right from 18.05.2009 [5.6.2009]. Admittedly such finalization / re-assessment / rectification, would have resulted in the refund, as is undisputedly stands proved by the refund finally granted on 05.09.2023, after a delay of almost 14 years. All these years their amount of Rs.1,07,91,250 was blocked which resulted in the appellant resorting the borrowings with interest ranging between 15% to 18% at that period of time.

12. He strongly submits that having conducted the Personal Hearing on 05.02.2010 and the appellant making all their written submissions by 15.02.2010, there was no reason as to why the assessment could have not be completed immediately. The final outcome by way of the OIA dated 24.09.2021, found the details given by the appellant to be relevant and the documents relied on and reasoning given by the Adjudicating authority vide OIO dated 25.01.2018 to be erroneous. The Test Reports given by the appellant have been found too acceptable. The purported Test Reports by CRCL were received in a delayed manner and were not even provided to the appellant [only on account of RTI application, they received the same]. The formula to be adopted as directed by the Hon'ble Supreme Court in the case of Gangadhar was not applied. All these have not only been noted in the OIA dated 24.09.2021, but also in the earlier OIA dated 31.08.2016. Therefore, the delayed assessment / rectification is in no way on account of any action/inaction from the appellant's side.

13. After making the submissions on factual details, the Ld Chartered Accountant submits that while the time-frame for finalization of assessment has not been specifically provided under the Section / Rules of the Customs Act / Rules, the Customs Manual specifies that the finalization is required to be completed within six months, except in case of project imports. In the present case, if the re-assessment / finalization was completed with a delay of 14 years, the Revenue cannot take the stand that in terms of Section 18(4), the interest would be payable only for the delay of more than 3 months from the date of finalization. Therefore, he prays the interest may be held as payable from 18.05.2009 [5.6.2009].

14. As an alternate argument, he makes further submission that the amount paid initially as Export Duty was always contested as being paid provisionally and now when the assessment / re assessment has been done, the differential excess duty

paid by him is to be treated as paid in the course of investigation when the appellant had to export the goods without having to wait to get all the details of Test Report checked so as to pay lesser Export Duty. Now since Test Reports have been accepted and it has been held that the appellant is eligible for the refund of the excess Export Duty paid, the same is required to be paid along with interest. He relies on the case of *Ranabaxy Laboratories Ltd Vs UOI – Judgement dated 21st October 2011*, wherein it has been held that amount paid in the course of investigation is required to be refunded along with interest.

15. He relies on the following case laws, wherein it has been held that the interest is required to be paid @ 12 per cent per annum:

The Judgement of in the case of SONY PICTURES NETWORKS INDIA PVT. LTD.,
In Writ Petition No.39089 of 2016 – Judgement dated 4th April 2017

Parle Agro Pvt. Ltd. Vs CCGST Noida
Final Order No. 70180-70181 / 2021

Commissioner of Central Excise, Panchkula Vs Riba Textiles Limited
CEA No.8 of 2022 (O&M)
Date of Decision : March 14, 2022

Sandvik Asia Ltd. Vs Commissioner of Income Tax-I, Pune & Ors.
DATE OF JUDGMENT: 27/01/2006

16. In view of the above submissions, he prays the appeal may be allowed holding that the interest @ 12% per annum is payable from 18.05.2009 [5.6.2009].

17. The Ld AR appearing on behalf of the Revenue, reiterates the findings of the lower authorities. He makes submits makes the following submissions :

- (a) As per the Dept's contention, the assessment was provisional. The provisional assessment has been finalized now.
- (b) No interest is required to be paid as Section 18(4) mandates payment of interest only if the refund is delayed beyond 3 months from the date of final assessment.
- (c) The appellant has filed their refund claim on 12.01.2022 after the OIA dated 29.09.2021 was passed. The refund was granted on 08.04.2022, that is within a period of 3 months from the date of receipt of the refund claim.
- (d) Therefore, he justifies the denial of the interest on the amount refunded to the appellant.

18. Therefore, the Ld AR justifies the orders passed by the lower authorities and prays that the appeals may be dismissed.

19. Heard both sides. Perused in detail, the appeal papers and documentary submissions made by both the sides.

20. The issue to be decided in the present case can be summarized as under :

- (a) Whether any interest is eligible to the appellant upon finding that the finalization of refund claim has resulted in a refund ?
- (b) If they are found to be eligible to interest, what would be the relevant date of interest?
- (c) If the interest is payable what would be the rate of interest to be paid?

21. In order to come to a conclusion in respect of the above issues, it would be important to go through the important factual matrix of the case. They are summarized below:

- (1) The details of Two consignments exported as per the following Table :

		Shipping Bill				Load Port					
S. No.	Vessel	S/B No	Date	Fe % in DMT	Moisture	Test Memo No	Sampling Period		Report Date	Fe% in DMT	Moisture
1	2	3	4	5	6	13	14	15	16	17	18
1	Thrasyvolous V	001121	26.02.2008	63.5	9	CK/C/2448	19-03-2008	- 29-03-2008	31-03-2008	63.76	6.20
2	Thrasyvolous V	001233	26.02.2008	63.5	9	CK/C/2448	19-03-2008	- 29-03-2008	31-03-2008	63.76	6.20

- (2) From the above table, it is seen that the appellant has uniformly claimed Fe content on WMT basis showing the same as 63.5% and moisture content of 9% in all the cases. When the same is compared with the Load Port Test Reports, it is seen that no two moisture content figures or two WMT figures would be same. Thus, it gets clarified that from consignment to consignment the moisture content and resultant WMT would be different.

- (3)The very basis for levying the Export duty is the Fe content. If the process of proving the Fe content before exporting, as the Iron ore is required to be tested and its result is to be accepted by the Customs, this would be a time-consuming affair. Therefore, in order not to miss the delivery schedule and save the

demurrage charges, generally the exporters carry out the exports by paying the full Export Duty.

(4) During the period under consideration, as to what formula / procedure to be adopted to arrive at the Fe content was also a matter of interpretation but was already decided by the Apex Court in the case of Gangadhar Narisingdas case (1995(08) LCX0048 dated 09.08.1995).

(5) The appellant has filed all their documents including the Test Report, Export Invoices, Shipping Bills and requested for finalization of the Shipping Bills. Sample copy of their request letter dated 18.05.2009 [submitted on 5.6.2009], is reproduced below :

**SESA GOA LIMITED**

25th Floor,
25th Floor, 25th Floor,
Parade, Goa 403 001
Tel : +91-832 2460806
Fax : 832460806

SESA GOA

May 18, 2009

To,

The Deputy Commissioner of Customs,
Custom House,
Parade.

Sir,

Sub: Request for finalization of provisional assessment
(PD assessment) and granting of consequential refund of
customs duty paid in excess - regarding.

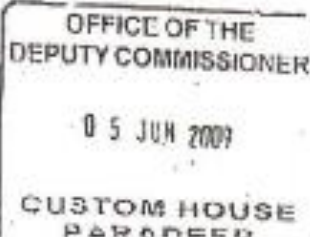
You are aware that we have exported iron ore under the following Shipping
Bill and paid export duty on the same.

Shipping Bills Nos. 001233/IOF/2007-08 dated 26.02.2008 and
001121/IOF/2007-08 dated 29.02.2008, Duty paid Rs.1,29,49,500/-.

At the time of assessment of the above Shipping Bills, assessment was made
provisional as may be seen from the endorsement made in the Shipping Bills
and as per instructions of the department appropriate PD Bond was also
executed. The provisional assessment was necessary for the reasons that
import was subject to restriction of Foreign Trade Policy as import of iron ore
beyond certain percentage in Ferrous content was restricted, the duty on
export of iron ore should not be charged on the weight of moisture content in
the ore as per the following decisions:

- 1) 1986 (26) ELT 918 in the case of Gangadhar Narsinghadas Agarwal Vs
U.O.I.
- 2) 1988 (33) ELT 673 (Bom.) in the case Union of India Vs Gangadhar
Narsinghadas Agarwal as upheld by Apex Court in 1997 (89) ELT 19
(SC).
- 3) 1987 (30) ELT 686 (Goa) in the case of Sociedade de Fomento
Industrial Pvt. Ltd Vs K.C. Lahiri.
- 4) Decisions taken recently by Commissioner of Customs (Appeal) in
Order-in-appeal dated 18.9.2008 in respect of exports effected from
Kolkata.

Thus the issue regarding payment of custom duty only on iron content is
thus settled and whatever excess duty paid by us on moisture content based
on Analysis Report (enclosed) is to be refunded to us.



2

SESA GOA LIMITED

Continuation Sheet No.

Date :

It is our submission that assessment made provisional on any aspect or ground will be treated as provisional for all aspects and no formal order of finalization of provisional assessment has been issued to us.

In the decision in the case of Collector of CE Madras Vs IOC Ltd 2002 (141) ELT 334 (Mad) the Hon'ble High Court held that if an assessment is provisional, it is provisional for all purposes and cannot be treated as final in respect of a matter not considered.

Since in the instant cases, the issue regarding payment of customs duties on moisture content in the iron ore has not been considered yet, the assessment made is not final and, therefore, we request you to consider the same and order refund of excess duty paid. Since assessment was provisional in terms of Section 18 of CA-1962, refund, if any, arising should be granted suo motto to us. We enclose herewith copies of following documents to enable you to process the finalization of provisional assessment from the above aspect.

- a. Copies of Shipping Bills (Annexure - I)
- b. Copies of Export Invoice (Annexure - II)
- c. Copy of Analysis Report (Annexure - III)
- d. Copy of cancelled Bond (Annexure - IV)
- e. Calculation sheet showing differential duty, excess paid to be refunded (Annexure - V)

We may state here as refund of custom duties is related to exports, provisions of unjust enrichment is not applicable. If any other documents are required same way kindly be called for.

Thanking you,

Yours faithfully,
for SESA GOA LIMITED



RUI FRAZERES
ASSOCIATE GENERAL MANAGER-LOGISTICS

Encl. : as above

- (6) Not having received any response from the Dept, the appellants have filed their Rectification request letter dated 1st October 2009 [submitted on 26.10.2009]

**SESA GOA LIMITED**

Port Office,
20 EDC, Calangute, Ponda,
Panaji, Goa 403 007
Tel: +91-832 2450500
Fax: +91-832 2450500

October 1, 2009

To,

The Deputy Commissioner of Customs,
Custom House,
Paradip.

Sub: Application under Section 154 of Customs Act, 1962 for correction of error arising from omission to apply law laid down by the Hon'ble Supreme Court in the case of Gangadhar Narsinghdas Agarwal reported in 1997 (89) ELT 19 (SC)

Dear Sir,

We are regular exporters of Iron Ore Fines from the Paradip Port. These Iron Ore Fines are exported in their natural form.

2. We submit that by the Finance Act, 2007 export duty on Iron Ores and Concentrates of all sorts was increased to Rs. 300/- per tonne. However, Customs Notification No.62/2007-Cus dated 03.05.2007 exempted iron ore fines of Fe content 62% and below from export duty in excess of the amount calculated at the rate of Rs.50/- per tonne.

3. In respect of the Iron Ore fines exported under the annexed shipping bills, export duty has been levied at the rate of Rs.300/- PMT, even though the Fe content in respect of the same was less than 62%. This fact would be evident from the various test results of the samples which were drawn at the time of export of the said goods. Bonds were also taken for the said purpose and subsequently cancelled. The results of the tests conducted by the Customs, being not handed over to us, shall be available in the Customs file/records and the same may be referred to for verification of the above, if required. However, we herewith, annex copies of the test results obtained at the load port from a reputed independent surveyor as Exhibit 'A' to this letter for your ready reference. However, while assessing the shipping bills, Fe content on dry weight, i.e. after excluding moisture content was considered for levying export duty as against Fe content of Iron Ore Fines in their natural form, which was to be taken into account. The law in this regard stands settled by the Hon'ble Supreme Court judgment in the case of UOI vs Narsinghdas Agarwal reported in 1997 (89) ELT 19 (SC).

OFFICE OF THE
DEPUTY COMMISSIONER

26 OCT 2009

CUSTOM HOUSE
PARADEEP

/ SESA COA LIMITED

Continuation Sheet No.

Date :

4. Your goodself will appreciate that Articles 141 and 144 of the Constitution of India provide that the law declared by the Hon'ble Supreme Court shall be binding on all Courts and that all authorities, civil and judicial in the Territory of India, shall not only be bound by it, but also apply and enforce the law declared by the Hon'ble Supreme Court.

5. In the present case, the shipping bills have been assessed by omitting to consider the law laid down by the Hon'ble Supreme Court in the case of Gangadhar Narsinghdas Agarwal, which clearly is an error in assessment. Section 154 of the Customs Act, 1962 vests in your goodself the power to correct at any time such an error/omission in the assessment. The said section in fact empowers even the successor in office to correct such an error/omission. In our humble submission, since the assessing officer had, while assessing the Shipping Bills, omitted to apply the law laid down by the Hon'ble Supreme Court, the said error made in such assessment is required to be corrected by your goodself in exercise of powers conferred under Section 154 of the Customs Act, 1962 and export duty at the correct rate be worked out and consequent relief, in accordance with the law, be extended to us.

6. We also wish to draw your goodself's attention to the decision of the Hon'ble Bombay High Court in the case of Hero Cycles Ltd vs. UOI, reported in 2009 (240) ELT 490, wherein, in a similar kind of situation where benefit of exemption was not extended due to omission, the Hon'ble High Court directed the assessing officer to re-assess the Bill of Entry after holding that it was the duty of the proper officer to have recovered duty only in accordance with law and that the power to assesses was implicitly coupled with a duty to re-assess the duty in accordance with law.

7. Since the levy of export duty in our case is not in accordance with law laid down by the Hon'ble Supreme Court, we would, request your goodself to correct the error/omission in the assessment in exercise of powers under Section 154 of Customs Act, 1962 and oblige.

8. We would also request you to grant us a personal hearing in the matter, in case any clarification is required.

Thanking you,

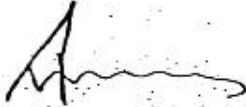
Yours faithfully,
For Sesa Coa Ltd



Rui Prazeres
Associate G.M.-Logistics

ABADIE SHIPMENTS FOR THE YEAR 2007-08

	Vessel Name	S.B. NO	S.B. date
1	Bars	000136/IOF/2007-08	19.05.07
2	Long Guan	000137/IOF/2007-08	19.05.07
3	Shen Nong Feng	000266/IOF/2007-08	22.08.07
4	Antwerp Ace	000311/IOF/2007-08	14.07.07
5	Rea	000427/IOF/2007-08	07.08.07
6	Good Light	000474/IOF/2007-08	28.08.07
7	C. Duckling	000510/IOF/2007-08	10.09.07
8	Ikan Serong	000561/IOF/2007-08	25.09.07
9	Alba	000606/IOF/2007-08	05.10.07
10	Prabhu Jivesh	000785/IOF/2007-08	27.11.07
11	Five Stars Eternal	000787/IOF/2007-08	28.11.07
12	Good Purpose	000849/IOF/2007-08	19.12.07
13	Prabhu Daya	000852/IOF/2007-08	22.12.07
14	Five Star Pionner	001057/IOF/2007-08	14.02.08
15	Thrasyvolous V	001121/IOF/2007-08	29.02.08





SESA GOA

SESA GOA LIMITED

Sesa Ghor,
20 EDC Complex, Patto,
Panaji, Goa 403 001
Tel: +91-832 2460600
Email: SESA@GOA

To,
Dy. Commissioner of Customs,
Custom House,
Paradip.

Date: 15.12.2009

Dear Sir,

With reference to the meeting had with you on 14.12.2009, please find attached copies of the following Case Laws as requested by you:

- 1) 1986 (26) ELT 918 in the case of Gangadhar Narsinghadas Agarwal Vs U.O.I.
- 2) 1988 (33) ELT 673 (Bom.) in the case Union of India Vs Gangadhar Narsinghadas Agarwal as upheld by Apex Court in 1997 (89) ELT 19 (SC).
- 3) 1987 (30) ELT 686 (Goa) in the case of Sociedade de Fomento Industrial Pvt. Ltd Vs K.C. Lahiri.
- 4) Hon'ble Bombay High Court in the case of Hero Cycles Ltd vs UOI reported in 2009 (240) ELT 490.
- 5) Decisions taken recently by Commissioner of Customs (Appeal) in Order-in-appeal dated 16.9.2008 in respect of exports effected from Kolkata.

Thanking you,

Yours Faithfully,

For Sesa Goa Ltd,

Raj Prasher
Raj Prasher,
AGM-Shipping Kamatak & Orissa

Raj Prasher
15/12

- (7) Written submissions made before the Asst Commissioner on 15.02.2010 for the PH held on 05.02.2010 :

**SESA GOA LIMITED**

Sesa Chlor,
20 EDC Complex, Patto,
Panaji, Goa 403 001
Tel : 191-832 2460000
Gsm : SESAGOA

February 15, 2010

The Deputy Commissioner of Customs,
Customs House,
Paradeep.

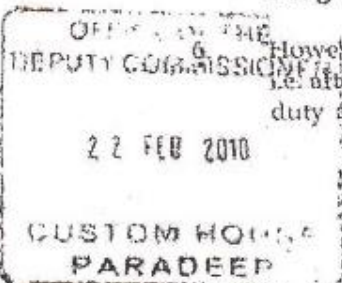
Sub: Application under Section 154 of Customs Act, 1962 for correction of error arising from omission to apply law laid down by the Hon'ble Supreme Court in the case of Gangadhar Narsinghadas Agarwal reported in 1997 (89) ELT 19 (SC).

Dear Sir,

We are grateful for the patient hearing granted to us on 10.02.2010, which was attended by our Counsel Mr. Sunil Navandhar along with our employee Mr. Bikash Ranjan Olha. We herewith present a resume of submissions made during the course of the above personal hearing:

Written Submissions

1. We are regular exporters of Iron Ore Fines, in their natural form, from the Paradeep Port.
2. Finance Act, 2007, increased the export duty on Iron Ores and Concentrates of all sorts to Rs. 300/- per tonne.
3. Customs Notification No.62/2007-Cus dated 03.05.2007, however, exempted iron ore fines of Fe content 62% and below from export duty in excess of the amount calculated at the rate of Rs.50/- per tonne.
4. In respect of the Iron Ore fines exported under the annexed shipping bills, export duty has been levied at the rate of Rs.300/- PMT, even though the Fe content in respect of the same was less than 62%.
5. In the above regard, copies of the test results obtained at the load port from a reputed independent surveyor have already been furnished along with our original application for your ready reference.



However, while assessing the shipping bills, Fe content on dry weight, i.e. after excluding moisture content was considered for levying export duty as against Fe content of Iron Ore Fines in their natural form, as

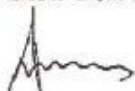
SESA GOA LIMITED

Continuation Sheet No. 2

Date :

- settled by the Hon'ble Supreme Court in the case of UOI vs Gangadhar Narsinghdas Agarwal reported in 1997 (89) ELT 19 (SC).
7. Articles 141 and 144 of the Constitution of India provide that the law declared by the Hon'ble Supreme Court shall be binding on all Courts and that all authorities, civil and judicial in the Territory of India, shall not only be bound by it, but also apply and enforce the law declared by the Hon'ble Supreme Court.
 8. In the present case, the shipping bills have been assessed by omitting to consider the law laid down by the Hon'ble Supreme Court in the case of Gangadhar Narsinghdas Agarwal, which clearly is an error in assessment.
 9. Section 154 of the Customs Act, 1962, vests in your goodself, the power to correct, at any time such an error/omission in the assessment.
 10. The said section in fact empowers even the successor in office to correct such an error/omission.
 11. We also wish to draw your goodself's attention to the decision of the Hon'ble Bombay High Court in the case of Hero Cycles Ltd vs. UOI reported in 2009 (240) ELT 490, wherein, in a similar kind of situation where benefit of exemption ~~was not extended~~ due to omission, the Hon'ble High Court directed the assessing officer to re-assess the Bill of Entry after holding that it was the duty of the proper officer to have recovered duty only in accordance with law and that the power to assesses was implicitly coupled with a duty to re-assess the duty in accordance with law.
 12. Accordingly, the said error is required to be corrected by your goodself in exercise of powers conferred under Section 154 of the Customs Act, 1962 and consequential relief, be granted to us.
 13. We would also request you to grant us a personal hearing in the matter, in case any clarification is required.

Thanking you,

Yours faithfully,
for Sesa Goa Ltd

(Rui Frazeres)
Associate General Manager-Logistics

- (8) Follow up reminder letter date 5.2.2014 sent to Dy.Commissioner and Commissioner and others :



vedanta

SESA STERLITE LIMITED

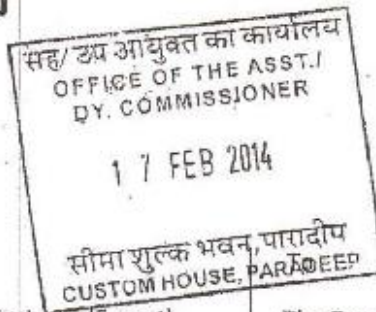
Sesa Bhor,
20, EDC Complex,
Patto, Paraj, Goa - 403001
Tel: +91-832-2460000
www.sesastl.com

Sesa/HO/Cust/13-14/

To,

Assistant Commissioner of Customs (Export)
Custom House,
Paradip

Dear Sir,

Date: 5th February 2014

The Commissioner,
Customs, Central Excise & Service Tax,
Bhubaneswar - I



Sub: Reminder for rectification of assessments u/s 154 of the Customs Act, 1962 for correction of error from omission to apply law laid down by Hon'ble Supreme Court in the case of Gangadhar Narsingdas Agarwal reported in 1997 (89) ELT 19 (SC)

Ref: Our Earlier Letters dated 26.05.2009, 01.10.2009, 05.10.2009, 27.01.2010, 05.02.2010, 15.02.2010 & 30.03.2010

1. This has reference to the subject request for rectifying the impugned assessments made erroneously by omitting to apply the law laid down by the Apex Court in matter of **Gangadhar Narsingdas Agarwal reported in 1997 (89) ELT 19 (SC)**.
2. In this regard, for your ready reference we are furnishing below brief facts of the case, kindly go through the same -
- 2.1 We, M/s Sesa Sterlite Limited (Formerly known as Sesa Goa Limited) are one of the largest exporters of iron ore in India. During the period May 2007 to March 2008, we have exported Iron Ore Fines from Paradip Port vide the following 16 shipping bills as mentioned below declaring moisture content 9% and Fe (iron ore contents) being 63.5% on dry basis. The Fe content was declared on dry basis based on the price fixed with the buyer on dry basis. A table setting out the details of shipments is enclosed by way of **Annexure I** (Ref: Pg. No. 15) -

SL No.	S/B No.	S/B Date	SL No.	S/B No.	S/B Date	SL No.	S/B No.	S/B Date	SL No.	S/B No.	S/B Date
1	000136	19.05.07	5	000427	07.08.07	9	000606	05.10.07	13	000852	22.12.07
2	000137	19.05.07	6	000474	28.08.07	10	000785	27.11.07	14	001057	14.02.08
3	000266	22.06.07	7	000510	10.09.07	11	000787	28.11.07	15	001121	29.02.08
4	000311	14.07.07	8	000561	25.09.07	12	000849	19.12.07	16	001121	26.02.08

001233

Copy of all the shipping bills along with proforma invoice is collectively attached herewith as **Annexure II (A to P)** [Ref: Pg No. 16-39].


SESA STERLITE LIMITED

Sesa Glor,
29, BIC Complex,
Patto, Panaji, Goa - 403001
Tel: +91-832-2480600
www.sesastl.com



were also been granted Personal Hearing on 10.02.2010 before the office of Deputy Commissioner of Customs, Custom House, Paradeep. However there was no order passed for disposing the above representations and request. A table showing sequence of follow ups made along with the copies of letters and written submissions are collectively attached as **Annexure VI** [Ref: Pg. No.81 -103].

- 2.6 Notwithstanding and without prejudice to the aforesaid we further submit that as per the provisions of Section 17 (4) of the Customs Act, 1962 the assessments must be made in accordance with the provisions of act and where the same has not been made appropriately the proper officer must re-assess the same in accordance with law.
- 2.7 We wish to submit that in similar cases pertaining to Paradeep Commissionerate for the same period, the Assistant Commissioner Of Customs, Custom House, Paradeep, vide **Order-In-Original No. AC/CUS/PDP/BBSR-I/41/2011 dt. 29.03.2011** (copy attached as **Annexure VII**) determined the rate of duty @ Rs. 50/- PMT and granted us the excess duty @ Rs. 250/- PMT. The department has accepted the above order and no appeal was preferred before the Tribunal. The above order may kindly be considered as the same was passed relying on the decision of the Honourable Supreme Court and our request for rectifying the impugned assessments may please be honoured as the same was passed ignoring the law laid down by Apex Court.

We therefore request you to kindly rectify the assessments u/s 154 of the Act or reassess the same under Section 17(4) of the act in accordance with the law laid down by the Apex Court.

REASONS / GROUNDS FOR RECTIFYING THE ASSESSMENTS

- 3.1 **Error in Omission to apply the law laid down by the Apex Court in determining the rate of export duty at the time of assessment** - It is not in dispute that the decision of Hon'ble Supreme Court in case of **UOI vs Gangadhar Narsingdas Aggarwal - 1997 (89) ELT 19 (SC)** is squarely applicable in the instant cases and was in existence at the time when the subject 12 shipping bills were presented for assessment in 2007. The aforesaid decision of the Apex Court had clearly laid down the manner of computation of export duty as explained in Para 2.3 (*supra*). It was incumbent upon the assessing officer to have correctly determine / collect export duty in accordance with the authority of law. The assessing authority committed a mistake by omitting to consider the law and hence the said mistake may please be rectified under Section 154 of the Act.
- 3.2 **Provision of Constitution of India provide to abide by the law laid down by Apex Court** - As explained in Para 2.4 (*supra*), the decision of the Apex Court was binding on the assessing authority while assessing the shipping bills and the same was omitted by accidental slip by


SESA STERLITE LIMITED

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Palto, Panaji, Goa - 403001
Tel: +91-832-2480800
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the assessing authority during the course of assessment. Hence the same is rectifiable under Section 154 of the Act.

- 3.3. **Section 17 of Customs Act requires lawful assessment** - Under Section 17 of the Customs Act, 1962, it is the responsibility of the proper officer to assess the shipping bill in accordance with law and recover only the appropriate duty. In present case the assessing authority failed to discharge his responsibility by omitting not to take cognizance of law laid down by Apex Court while assessing the shipping bills. It is for such omission or error committed by the proper officer, the same is to be corrected while dealing with the exporter's application for refund after rectifying the assessments under section 154 of the Act.
- 3.4 **Meaning of the term "Omission"** - The expression "Omission" has been defined in Black's Law Dictionary to mean "neglect to perform what the law requires". As per the law dictionary the same means "neglect or failure to do something what the law requires". From the aforesaid dictionary meaning it is crystal clear that failure to apply law laid down by Apex Court while assessing the shipping bills was a clear omission on the part of the assessing officer to perform what the law requires and that in terms of Section 154 such an omission ought to have been corrected. Thus the proper officer failed to do what is required by the law.
- 3.4 **Applicability of various judicial pronouncements supporting rectification of our impugned assessment made by omitting to consider the Apex Court decision**
 - 3.4.1 We wish to submit that the facts of the present case are similar of our another case reported as **Sesa Goa Ltd. Vs Commissioner of Central Excise, Goa - 2010 TIOL 1729 CESTAT MUM** wherein it was held that it is the duty of the Customs Officer while assessing the Bills of Entry to assess in accordance with law. Proper Officer failing to take cognizance of the Apex Court decision while assessing the Bills of Entry can be termed as accidental slip or omission and such errors are to be corrected in terms of Section 154 of the Customs Act, 1962 and need not be challenged for filing the refund claims. The appellant in that case imported coaking coal for manufacture of MET coke and paid the duty and cess determined by the customs at the time of provisional assessment. However, after the final assessment was completed the appellant realized that in case of import of coaking coal, they were not required to pay the import cess and education cess as per the decision of Hon'ble Apex court in the case of CCE& Cus Bhubhaneshwar vs Tata Iron & Steel Co. Ltd. - 2003 (154) ELT 343 wherein it was held that cess is not leviable on import of coal. Accordingly the appellant filed refund claims, which were rejected by lower authorities. Appellant urged that the said impugned assessments are a mistake of the assessing authority who should have applied the law laid down by the apex court suo-motto while assessing the bills of entry and that the said mistake are rectifiable under section 154 of the Act. The Hon'ble Tribunal directed the lower authorities to correct


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the assessments by making good the omissions in assessment in applying the law laid down by the apex court.

The facts of that case of exporter are very similar to the present facts of the case, where at the time of export the assessing authorities failed to apply the Apex Court decision as held in case of Gangadhar Narsinghdas Agarwal vs UOI (*supra*) and made incorrect assessment and unlawful collection of excess duty. Thus the assessments in present cases should be rectified under the provisions of Section 154 of the Act and excess collection of duty charged by the proper officer at the time of export ought to be refunded to them after the order is being passed. Copy of caselaw attached as **Annexure VII** [Ref: Pg. No.107 - 119].

- 3.4.2 Notwithstanding and without prejudice to the above, in case of **UOI vs Aluminium Industries Ltd.- 1996 (83) ELT 41**, Hon'ble Kerala High Court while dealing with similar circumstances, where at the time of assessment, the correct rate of duty was not applied by the proper officer, the same was held as an error arising in assessment on account of omission to apply correct rate of duty. While dealing with the issue Hon'ble Kerala High Court has observed that

Section 154 covers following four types of situation where there is -

(i) clerical mistake in any decision; (ii) arithmetical mistake; (iii) errors arising from any accidental slip, or (iv) errors arising from accidental omission at the time of assessment.

If any of above four types of errors has crept in, the corrective power mentioned in the section can justifiably be used. Perusal of Section 154 makes it clear that such mistakes/errors/omissions arising in any decision or order passed by an officer of Customs can be corrected, at any time, by such officer or the successor in the office of such officer. The principle underlying in Section 154 of the Act is that the record relating to the customs duty are maintained properly and correctly and that such records should represent the correct state of affairs. It is in this belief and regard, that the assessments in the instant case should be rectified u/s 154 of the Act in so far as it errs in omitting to apply the law laid down by the Hon'ble Supreme Court while calculating the rate of duty for Iron Ore Fines being exported out of India. Copy of caselaw attached as **Annexure IX** [Ref: Pg. No.120 - 122]

- 3.4.3. Hon'ble Bombay High Court in the case of **Hero Cycles Ltd vs UOI-2009 (240) ELT 490** held that **duty was cast upon the proper officer to assess the goods and impose duty according to law**. It was held that once a power to assess is conferred upon a proper officer, there is a corresponding duty on the proper officer to assess the duty according to law. The Hon'ble High Court in that case was concerned with an application filed under Section 154 of Customs Act, 1962 seeking rectification in the assessment whereby, the benefit of a notification had been omitted to be considered while assessing the Bill of Entry. In response



SESA STERLITE LIMITED

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Patala, Panaji, Goa - 403001
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to this application, revenue had contended that since the assessee had not claimed the benefit of the, notification, its case was not covered by provisions of Section 154 of Customs Act, 1962. This submission of the revenue was rejected by the Hon'ble High Court and it was held that it was the duty of the proper officer to have made assessment in accordance with law and arrive at the correct duty payable. Para 8 of the judgment may please be referred in this regard.

The above ruling of the Bombay High Court was further adjudicated before the Hon'ble Supreme Court by the Union of India by way of Special Leave petition registered with Appeal (Civil) CC No. 3015 of 2010, where the Apex Court after hearing the facts of the case, dismissed the SLP and without interfering upheld the decision of Bombay High Court and the case was reported as Union of India vs Hero Cycles Ltd. - 2010 (252) E.L.T. A103 (S.C.).

Copy of the pronouncement of Bombay High Court and Supreme Court in the aforesaid case enclosed hereto as Annexure X [Ref: Pg. No.123- 126]

3.4.4 Hon'ble Tribunal has also in the case of Bennet Colman & Co.Ltd vs Commissioner of Customs- 2008 (232) ELT 367 (Tri.Bang) (copy of caselaw enclosed as Annexure XVI) has held that failure to extend the benefit of a notification is a case of omission on the part of the assessing officer and that such omission can be corrected under Section 154 of the Customs Act, 1962. We submit that the ratio of the decision in the case of Bennet Colman & Co Ltd applies in all fours to the facts of the instant case. Para 7 & 7.3 of the judgment may please be referred in this regard. Copy of caselaw attached as Annexure XI [Ref: Pg. No.127 - 129]

3.4.5 Hon'ble Supreme Court has, in the case of Master Construction Company P. Ltd vs State of Orissa-AIR 1966 SC 1047: (1966) 17 STC360, explained that an error arising out of or occurring from accidental slip or omission would constitute to mean an error due to careless mistake on the part of the Court, liable to be corrected. We submit that in the instant case also, failure to apply the law laid down by the Hon'ble Supreme Court in the case of UOI vs Ghangadhar Narsingdas Aggarwal was a careless mistake on the part of the proper officer which was liable to be corrected in exercise of powers under Section 154 being an error arising out of or occurring from accidental slips or omission. Copy of caselaw attached as Annexure XII [Ref: Pg. No.130- 132]

3.4.6 Without prejudice to the above, we also wish to place reliance on the decision of the Hon'ble Supreme Court in the case of Asstt. Commissioner, Income Tax VS Saurashtra Kutch Stock Exchange-(2008) 14 SCC 171 wherein, the Hon'ble Supreme Court was concerned with the case where the Tribunal while deciding the case overlooked a decision of the Gujarat High Court which had been rendered few months earlier and which was squarely applicable


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to the facts of the side cause. The assessee therein brought the facts to the notice of the Tribunal by way of an application for rectification of mistake apparent on record. This application was allowed by the Tribunal by rectifying its mistake. Against this order of the Tribunal rectifying the mistake, revenue filed a Writ Petition before the Gujarat High Court which was dismissed by the Hon'ble Gujarat High Court and against that a Special Leave Petition was filed before the Supreme Court. The Hon'ble Supreme Court while disposing of the SLP held that non consideration of a decision of a higher Court, i.e. jurisdictional High Court or Supreme Court was a mistake apparent from record which was required to be rectified and the SLP filed by the revenue was rejected. Copy of caselaw attached as **Annexure XIII** [Ref: Pg. No.133 - 140]

- 3.4.7 To the same effect is the decision of the Larger Bench of the Tribunal in the case of **Hindustan Lever Ltd vs CCE-reported in 2006 (202) ELT 177 (Tri. LB)** wherein, it was held that a subsequent decision of the Supreme Court is also a basis for filing an application for correction of an error apparent on record. Appellant submits that omission to consider and apply the decision of Hon'ble Supreme Court is akin to making of a mistake apparent on record and the ratio laid down in these decisions ought to be applied in the appellant's case also. Copy of caselaw attached as **Annexure XIV** [Ref: Pg. No.141- 144]

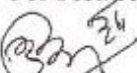
Reference may also be made to the decision of CESTAT, Bangalore in matter of **CC, Guntur Vs Sameera Trading Company reported as 2011 ELT (264) 578** wherein it was in case of erroneous assessments and collection of higher duty the same should be rectified u/s 154 of the Act or suitably reassessed u/s 17(4) of the Act in accordance with law. Copy of caselaw attached as **Annexure XVII** [Ref: Pg. No. 145-147]

4. Based on the above submissions we request your kind selves to kindly look into the matter for disposing off our requests for rectification of the assessment of the subjected 16 shipping bills u/s 154 of the Act or re-assessment u/s 17 (4), as appropriate to enable us for getting the refund of excess export duty @ Rs. 250/- PMT.

Your early action in the matter would be highly appreciated.

Yours sincerely

For Sesa Sterlite Ltd,


Mukesh Laddha

[Associate General Manager - Taxation]

Enclosure: As above

- (9) Representation letter to Chief Commissioner and Commissioner 6.5.2014 submitted on 7th May 2014 :



sesa sterlite
a vedanta company

Received the
Letter but
enclosures are not
received
Prisupab
05-05-14
PA to CC

SESA IRON ORE

Sesa/HO/Cust/14-15/

Date: 6th May, 2014

To,

- 1) The Chief Commissioner,
Customs, Central Excise & Service Tax,
Bhubaneswar
- 2) The Commissioner,
Customs, Central Excise & Service Tax,
Bhubaneswar-I



Dear Sir,

Sub: Inordinate delay in Assessment of Shipping Bills while correcting the error- from omission to apply law laid down by Hon'ble Supreme Court in the case of Gangadhar Narsingdas Agarwal reported in 1997 (89) ELT 19 (SC)

Ref: Our recent Letters dated 11.04.2014, 19.03.2014, 05.02.2014.

1. We M/s. Sesa Sterlite Limited (formerly known as Sesa Goa Ltd.) , one of the largest export of Iron Ore in India exported Iron Ore Fine from Paradip Port vide below mentioned 16 Shipping Bills during the period May 2007 to March 2008, declaring moisture content 9% and Fe (Iron ore contents) being 63.5% on dry basis. The details of the shipping bills and other particulars are shown at Annexure - 1 (Page 48).

SL No.	S/B No.	S/B Date	SL No.	S/B No.	S/B Date	SL No.	S/B No.	S/B Date	SL No.	S/B No.	S/B Date
1	000136	19.05.07	5	000427	07.08.07	9	000606	05.10.07	13	000852	22.12.07
2	000137	19.05.07	6	000474	28.08.07	10	000785	27.11.07	14	001057	14.02.08
3	000266	22.06.07	7	000510	10.09.07	11	000787	28.11.07	15	001121	29.02.08
4	000311	14.07.07	8	000561	25.09.07	12	000849	19.12.07	16	001233	26.03.08

2. The issue has been discussed personally on 05.05.14 with the Commissioner of Customs, Bhubaneswar-1, based on discussion we are again attaching the relevant shipment documents like copies of all the Shipping bills, Proforma Invoice, Final Invoice and test analysis reports of Govt approved lab. The same are collectively attached herewith as **Annexure II (A to P) [Ref: Pg No. 5 to 266]**.

3. At the time of export prevailing export duty on Iron Ore Fines was on **Per Metric Tonne basis** i.e. @ Rs. 300/- PMT If the Fe content in the iron ore fines exported was above 62%, while it was leviable @ Rs. 50/- PMT If the Fe content was equal to or less than 62%. [Ref: Notification No. 62/2007 dated 03.05.2007].

Sesa Sterlite Limited

(Formerly known as SESA GOA LIMITED)

C.I.N. NO.L13209GA1965PLC000044

Registered Office: Sesa Ghor, 20 EDC Complex, Patto, Panaji (Goa) - 403 001



sesa sterlite
a vedanta company

SESA IRON ORE

4. It is now well settled by the Hon'ble Supreme Court in the matter of **Union of India Vs. Gangadhar Narasingdas Agarwal - 1997(89) E.L.T. 19 (S.C.)**, that since export duty on Iron Ore is relatable to the weights of the Iron contents in the ores being exported i.e., in WET (Moist) form it would be incorrect if the percentage of iron ore contents is determined on dry weight i.e. after ignoring the moisture contents relatable to the ore weight at the relevant point of time for levying export duty. For the purpose of determination of rate of duty at the prevailing time Fe content must be determined on wet basis.

5. As already submitted vide our earlier letters, in the instant cases there was an omission by the proper officer to apply the law laid down by Hon'ble Supreme Court in the case of **UOI vs Gangadhar Narsighdas Agarwal** which confirms that Fe content in the iron ore exported ought to be determined on wet basis by applying the mathematical formula so called **ASTM D formula**, the same is attached as **Annexure-III** at page no 267. This formula has also accepted by the Central Revenue Control Lab (CRCL) as mentioned in para 22 of the Mangalore Commissioner Order IN Original S. No. '04/2010 (Commr)' attached as **Annexure-IV** at page no 268. The said order is also accepted by Committee of Chief Commissioner on 16.07.2010 vide S. No. VIII/48/2010/CCU. Accordingly in present cases, Fe contents in Wet condition were less than 62%, the applicable rate of duty was Rs.50/- whereas the customs have collected duty at Rs. 300/-. The impugned provisional assessment ought to be finalised in accordance with the provisions of the law. In this regard, we have been requesting to office of Assistant Commissioner vide our letters dated 26.05.2009, 01.10.2009, 05.10.2009, 27.01.2010, 05.02.2010, 15.02.2010, 30.03.2010, 05.02.2014, 19.03.2014 and 11.04.2014 to rectify the error and finalise the assessments in accordance with provisions of law.

6. The above-mentioned position of law has been accepted by CBEC and vide Circular No. 4/2012-Cus dated 17.02.2012 issued from File No. F. No. 450/93/2011-Cus. IV Board has categorically observed that for the purpose of charging of export duty the assessment of Iron ore for determination of Fe contents shall be made on Wet metric tonne (WMT) basis which in other words means deducting the weight of impurities (inclusive of moisture) out of total weight / gross weight to arrive at Net Fe contents.

7. From the above mentioned statement it is very clear that department has wrongly assessed (provisional basis) the above mentioned 16 shipping bills which caused us to pay excess amount of export duty to the tune of **Rs. 14,20,46,000/-**.

8. In the similar cases earlier the office of Assistant Commissioner, Paradip has already sanctioned refund vide O-I-O No. AC/CUS/PDP/BBSR-1/41/2011 dated 20.03.2011 in compliance to O-I-A No. 68/CUS/BBSR-I/2010 dated 13.10.2010. The copy of both the said orders are attached as Annexure-V at page no. 286 for your ready reference please

Sesa Sterlite Limited
(Formerly known as SESA GOA LIMITED)
C.I.N. NO.L13209GA1965PLC000044



SESA IRON ORE

9. We again draw your kind attention that we have pursued the matter at our best by issuing series of detailed letter and follow ups vide dated 11.04.2014, 19.03.2014, 05.02.2014 on the above subject matter, wherein we have stated in details the reasons for our representations and repeatedly requested Assistant Commissioner of Customs, Export, Paradip to rectify the error made by omitting to apply the law laid down by the Apex Court in matter of Gangadhar Narsingdas Agarwal reported in 1997 (89) ELT 19 (SC). The copy of the above-mentioned letters are collectively annexed at 'Annexure - VI' (Page -31) to Page -32) for your kind perusal and ready reference.

10. We are very sorry to state that in spite of the our continuous follow ups, persuasion and issuance of requests along with reminder the Assistant Commissioner of Customs, Export is still sitting on the file without taking any action. He has also violated the direction of the Board given in the Citizens' Charters by not replying to any of our letters. Being aggrieved by the no action we request your kindness to intervene in the matter.

Your good self will notice from the records of the file that the Assistant Commissioner of Customs, Export has neither given any reply to our above mentioned letters nor he has passed any order in regard to assessment on the 16 shipping.

11. We again humbly request your kind selves to look into the matter and direct the concerned officer to decide the issue immediately to avoid future litigation as the issue in question is lying pending since for than 5 years without any action.

Your early action in the matter would be highly appreciated.

Yours sincerely

For Sesa Sterlite Ltd,

Mukesh Laddha
[Associate General Manager - Taxation]

Enclosure: As above

Copy to- ✓ The Assistant Commissioner of Customs (Export), New Custom House, Paradip

मुख्य कार्यालय
OFFICE OF THE / SSI /
DY. COMMISSIONER

06 MAY 2014

सीमा शुल्क भवन, पारादीप
CUSTOM HOUSE, P.

Sesa Sterlite Limited
(Formerly known as SESA GOA LIMITED)
C.I.N. NO.L13209GA1985PLC000044

(10) Letters submitted on 26.10.2016 and 23.01.2017 to Asst Commissioner to implement the orders of OIA dated 31.08.2016



Vedanta/HO/Cust/16-17/107

OK sesa goa iron ore

Date: 26/10/2016

To

The Deputy Commissioner of Customs,
Custom House,
Paradeep

Copy To,

The Commissioner of Customs (C),
Rajaswa Vihar
Bhubaneswar

CUSTOMS (PREV.)
Bhubaneswar

07 NOV 2016

Dear Sir,

08 NOV 2016

Sub: Request for processing refund claims by implementation of Order No. 18/CUS/CCP/2016 dated 31.08.2016, passed by Commissioner (Appeals), Bhubaneswar.

RECEIVED

Kindly refer to the captioned Final Order Nos. 18/CUS/CCP/2016 dtd. 31.08.2016, passed by Commissioner (Appeals), Bhubaneswar, in relation to the appeals filed against the orders passed by Id. Assistant Commissioner Of Custom House, Paradeep.

BREIF FACTS OF THE CASE

- 1.1 We M/s Sesa Goa Limited (now known as Vedanta Limited), Goa had during the period Feb 2008 to march 2008, exported Iron ore fines from Paradeep Port vide Shipping Bill Nos. 001121/IOF/2007-08 dt. 29.02.2008 & 001233/IOF/2007-08 dt. 26.03.2008 for export of 42,000 wet metric tonnes (WMT) and 1165 WMT of iron ore fines respectively as per M.V. Thrasyvolous V at Paradeep Port.
- 1.2 At the time of export, prevailing export duty on Iron Ore Fines was Rs 300/- per ton. However, vide Custom Notification No 62/2007-Cus dated 03.05.2007 export duty on iron ore fines, having Fe content 62% and below was exempted in excess of Rs 50/- per ton. Accordingly export duty @ Rs 300/- PMT was leviable if the Fe content in the exported iron ore Fines was above 62%.
- 1.3 Since the actual Fe content, moisture percentage and other chemical specifications like Sulphur, Silica, Aluminium, etc. was not known at the time of filing the shipping bill, hence FOB value of the export product was arrived on provisional basis and proforma invoice was filed on the presumption that the Fe content may be 63% on DMT. The above parameters were subject to the finalization on basis of test report of a Government recognized laboratory and such determination normally causes minor variations in the technical attributes. Upon receipt of such test report the Final invoice is raised and final FOB value determined. This is as per the term of contract with the buyer and practice of trade followed all over industry. Since the price was not final and was subject to final determination of FE content, moisture etc. the shipping bill was filed and assessed on

VEDANTA LIMITED (Formerly known as Sesa Sterline Ltd/Sesa Goa Ltd.)
Sesa Goa iron ore: Sesa Ghor, 29 EOC Complex, Patto, Panjim, Goa - 403 001, India
T-91 0832 2460600, Website: www.vedantalimited.com



sesa goa iron ore

provisional basis u/s 18 of the Customs Act, 1962 and PD Test Cum PD bond was furnished by the appellant in respect of the aforesaid shipping bill.

- 1.4 The appellant thereafter requested the office of Deputy Commissioner of Customs, Custom House, Paradeep, to finalize the long pending provisional assessment of the two shipping bills 001121/IOF/2007-08 dt. 28.02.2008 & 001233/IOF/2007-08 dt. 26.03.2008 and grant consequential refund of Rs. 1,05,00,000/- and Rs. 2,91,250/- respectively, being excess payment of Rs. 250/- PMT on the exported 42,000 WMT and 1165 WMT of iron ore fines respectively vide letter dated 18.05.2009, 01.10.2009, 15.12.2009, 27.01.2010 and 05.02.2010.
- 1.5 The Appellant received an assessment order No. C.No.VIII-CUS 51 (299)/EXP/PDP/08/3160 dated 08.07.2014 from the Assistant Commissioner of Customs, Custom House, Paradeep, in respect of the two shipping bills stating that the shipping bills that were assessed provisionally has been finally assessed on receipt of required documents. Consequently P.D. Bonds has been redeemed.
- 1.6 The said order suffered the following defects and aggrieved with the said order the Appellant filed appeal with the Commissioner (Appeal).
 - a. The appellant had filed provisional shipping bills and the same were assessed finally vide above order; however the appellant had requested for finalization by considering various parameters/case laws/circulars but the assessing officer has not informed the Appellant nor has provided any reasons for deferring with submissions of the Appellant.
 - b. The order is not a speaking order in terms of Section 17(2) & Section 17(5) of the Customs Act, 1962.
 - c. The benefit of exemption Notification No. 62/2007 dated 03.05.2007 was not given.
 - d. While finalizing the assessment, the CBEC circular No. 4/2012-Cus dated 07.02.2012 has not been followed nor any reason given for not following the same.
 - e. The said order is bad in law as it has failed to apply the decision of Hon'ble Supreme Court in case of UOI vs Gangadhar Narsingdas Aggarwal – 1997 (89) ELT 19 (SC) regarding ascertainment of Fe content in the export consignment and no reason has been given for not following the same.
 - f. Although the assessments were provisional subject to finalization on receipt of test reports from Customs laboratory, the same was assessed finally without providing the said test reports.
 - g. The assessing officer has failed to take into consideration the test reports issued by Customs laboratory and the Govt. approved laboratory.



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- h. The Appellant was entitled for refund of Rs. 1,05,00,000/- and Rs. 2,91,250/- against the above said shipping bills. The same was not granted and appropriated without the authority of law which is a violation of the law of the land.
- 1.7 The aforesaid appeal has been allowed by Commissioner (Appeal) vide O-i-A No. 18/CUS/CCP/2016 dtd. 31.08.2016 by remitting back to your good office for a fresh decision by considering all the submissions made to the AC/DC of Paradeep Custom in the appeal including further submissions if any to be made herein after and to pass a reasoned speaking order following the principle of natural justice within a period of two months from the date of Communication of order.
2. In view of the above we request you to pass a speaking reasoned order in terms of Section 17(2) r.w. Section 17(5) of the Customs Act, 1962 as held in case of **M/s Visa Steel Limited vs Commissioner, CCEST, Bhubaneswar** considering the following.
- Test Reports: The Fe content is 59.75% as per Customs Laboratory, 59.81% as per Govt. approved laboratory and 59.55% as per Discharge port Test Report on WMT basis in respect of the said shipping bills. Since the said Fe contents are less than 62%, the rate of duty applicable on such iron ore is Rs. 50 as per exemption notification No. 62/2007 dated 03.05.2007.
 - The law laid down by the Hon'ble Supreme Court in the case of **UOI vs Gangadhar Narsingdas Aggarwal - 1997 (89) ELT 19 (SC)**, wherein it has been held that for the purpose of applying the rate of duty on the Iron Ore Fines being exported out of India, the Fe content must be determined on NATURAL, WET basis or AS RECEIVED basis and not on DRY basis. This is because export duty was relatable to weight of the iron ore exported, the percentage of Fe content in the exported iron ore was to be considered in the natural form.
 - Board Circular No. 04/2012 dt. 17.02.2012.
 - The directions given by the Commissioner (Appeals) in the above order No. 18/CUS/CCP/2016 dated 31.08.2016.

Based on the above submissions we earnestly request your good selves to implement the above said Order in Appeal and kindly pass a reasoned speaking order and grant the refund amount of Rs 1,07,91,250/- at the earliest. The detailed calculation sheet for refund entitlement is attached herewith as **Annexure-I**. We wish to be heard in person before the matter is finally disposed-off.

VEDANTA LIMITED (Formerly known as Sesa Sterile Ltd/Sesa Goa Ltd)
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Kindly acknowledge the receipt of this letter.

Thanking You,

Yours sincerely

For Vedanta Ltd

Benicio Menezes

Associate General Manager – Taxation

Encl: As Above



sesa goa iron ore

Vedanta/HO/Cust/16-17/176

Date: 23.01.2017

To

The Deputy Commissioner of Customs
Custom House, Paradeep
Odisha- 754142

Dear Sir,

Sub: Representation on long pending refunds

Ref: Our Letter No. Vedanta/HO/Cust/16-17/107 dated 26.10.2016

This is with reference to our aforesaid letter dated 26.10.2016 (Copy attached) wherein we had requested your good self to implement Order-in-Appeal No. 18/CUS/CCP/2016 dated 31.08.2016 passed by the Commissioner (Appeals) and also requested for disbursement of the long pending refunds towards excess duty collected for export of Iron Ore Fines from Paradeep port vide shipping bill No. 001121/IOF/2007-08 dt. 29.02.2008 and 001233/IOF/2007-08 dt. 26.03.2008 as per vessel named M.V. Thrasyvolous V.

We request you to take up the implementation of order of the Commissioner (Appeals) by fixing the date for personal hearing as requested vide our letter dated 26.10.2016.

Thanking You

Yours sincerely,

For Vedanta Limited (Formerly known as Sesa Sterlite Ltd. / Sesa Goa Ltd.)

Name: Benicio Menezes

Designation: Associate General Manager, Taxation

Enclosure(s): As above

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T +91 0332 2480600 | Website: www.vedantalimited.com



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Copy To

- 1) The Commissioner Of Customs
Central Revenue Building, Rajaswa Vihar
Bhubaneswar-751007
- 2) The Chief Commissioner
Central Revenue Building, Rajaswa Vihar
Bhubaneswar-751007



sesa goa iron ore

155

VEDANTA/HO/CUST/19-20/067

Date: 13.03.2020

To

The Chairnan
Central Board of Indirect Taxes & Customs
North Block
Department of Revenue
Ministry of Finance
New Delhi – 110 001

Kind Attention: Shri M. Ajit Kumar, The Chairman, CBIC

**Subject: Representation regarding Appointment of
Commissioner (Appeals), Bhubaneswar**

**Reference: Pending Appeal matter against OIO No.
"AC/CUS/PDP/B-Cus(Prev.)24/2017" dated
25.01.2018 passed by the Assistant
Commissioner of Customs, Paradeep**

Personal hearing attended on 27.03.2019

Dear Sir,

1. Vedanta Limited's Sesa Goa Iron Ore (**hereinafter referred to
as "the Appellant" or "the Company" as the context may**

VEDANTA LIMITED

Sesa Goa iron ore: Sesa Ulan, 20 EDC, Coimbatore, India. Phone: +91-203 091 1000

require) is a public limited Company incorporated under the Companies Act, 1956 and is one of the largest exporters of Iron Ore in India. In recognition of its export performance, the Company has been accredited with the status of a 4 Star Trading House by DGFT.

2. This Representation is being submitted for taking appropriate action on disposal of our pending appeal before Commissioner (Appeals), Bhubaneswar filed against the Order-in-Original No. "AC/CUS/PDP/B-Cus(Prev.)24/2017" dated 25.01.2018 **(hereinafter referred to as "the OIO")** passed by the Learned Assistant Commissioner of Customs, Paradeep **(hereinafter referred to as "the Ld. AC" or "the Adjudicating Authority" as the context may require).**
3. The said Appeal has been filed on 10.04.2018. The last personal hearing was granted after almost a year from the date of filing of Appeal, i.e., last personal hearing was on 27.03.2019. Since then, even after passing of approximate one year, neither further personal hearing has been granted nor has any Order been passed.
4. Based upon the personal visits made and enquiries made by us or on our behalf, it is learned that the position of the Commissioner (Appeals) is lying vacant for about one year. Earlier also, after a lot of wait, the position was filled-up.
5. In absence of critical position of Commissioner (Appeals), the whole process of personal hearings and disposal of Appeals has been delayed, which is unjust and improper as this has also deferred the whole process of resolutions to grievances filed against OIOs.

6. This has delayed the justice and has further resulted in blockage of funds of the Appellant, as the Appeal is filed against rejection of genuine refund claims on baseless grounds.
7. The Appellant urges to make appointment of Commissioner (Appeals) on priority so that the pending Appeal may be heard expeditiously. This is more in view of the fact that the issue in the subject Appeal has already been decided in favor of the Appellant in identical cases before various Departmental Authorities/ Tribunals/ Courts.
8. The Appellant further submits the Appellants have a strong case in its favor and the issues are already settled either in identical case of the Appellant or others, and huge amount of refund Rs. 1,07,91,250/- is wrongfully rejected.
9. Since the impact of the OIO is substantial, the huge amount of working capital is being blocked and the Appellant is facing undue financial hardship if the matter is not determined at the earliest.
10. It is pertinent to mention here that from September 2012, several restrictions have been imposed on mining industries in general and particularly in Goa with respect to carrying out mining operations and export activities. These restrictions has resulted into a full-fledged closure of the business of the Appellant since September 2012. The mining activities were resumed later from October 2015, however activities were again halted from March 2018.
11. Since then, there are no cash inflows and the Appellant is under severe financial crisis. The Appellant, even though being the

through possibly the worst period in its history due to mining and export restrictions in Goa and Karnataka. In view of the unprecedented tough time and precarious financial condition, blockage of such huge substantial amount of refund is causing severe financial hardship and irreparable loss to the Appellant even though the Appellant has a strong case in its favor.

12. On this premise, no other alternative, efficacious and speedy remedy is available to the Appellants. The Appellant submits that it is just, fit and necessary that the above Appeal be disposed of at the earliest date convenient, pursuant to appointment of The Commissioner (Appeals).

Prayer

Based on the above submissions, it is respectfully prayed that:

1. Vacant position of Commissioner (Appeals), Bhubaneswar may kindly be filled-up at the earliest.
2. The subject Appeal is listed for disposal at the earliest on merits.

Please take aforesaid submissions on record, and oblige us by considering it with Appointment of the vacant position.

We are keen to meet you in person. Please let us know suitable date and time when we can visit your good office and explain in person the difficulty being faced by us.

Should you require any further information/ documents in this regard, please let us know, we shall be glad to submit the same upon hearing from you.

Thanking you.

Yours Sincerely,

For Vedanta Limited



Authorized Signatory

Name: Benicio Menezes

Designation: Associate General Manager, Taxation

Copy To

The Chief Commissioner

Office of Chief Commissioner of Central GST & Customs

Bhubaneswar, Odisha

22. The above documentary evidence clarifies that at every stage the appellant has been pursuing vigorously the issue of finalization of the assessment and at every stage the Dept. was taking its own time and not following any of the time-frame given to them.

23. The CBEC's Customs Manual at Chapter 7, Para 3.1 has given the following directions with regard to Finalization of the assessment orders:

3. Finalization of provisional assessment:

3.1 The assessments must be finalized expeditiously, well within 6 months. However, in cases involving machinery contracts or large project imports, where imports take place over long period, such finalization may take more time. Here too, effort should be made to finalize the cases within 6 months of the date of import of the last consignment covered by the contract.

24. In the present case, it is not a case of any project imports. The appellant has on 18.5.2009 [5.6.2009], itself has provided the Load Port Test Report along with all the relevant documents required for finalization of the assessment order. He has also cited the Gangadhar Narasingdas of Supreme Court judgement for adoption of the formula given therein. But no action has been taken to complete the assessment order even within 6 months of this letter.

25. Though the initial start was made by holding the PH on 5.2.2010 and the appellant has filed the Written submissions on 15.2.2010, for some inexplicable reasons, the matter was assigned to cold-storage for the next more than 4 years. Only after the appellant's regular follow-up by writing letters to all the higher-ups the non-speaking order, which was very succinctly put up by the Commissioner (Appeals) in his OIA, was passed on 14.07.2014. On further Appeal to Commissioner (Appeals), he had given a definite time frame of 2 months, which was totally disregarded and OIO was finally passed only on 25.01.2018. No reason whatsoever is forthcoming from the Revenue for such a delay. In respect of the next Appeal filed before the Commissioner (Appeals), the condition was very pathetic with there being no Commissioner (Appeals) in place to take up the proceedings, leading the appellant to make a request to post the person. Finally, it has taken the Commissioner (Appeals) to pass the order re-determining the assessment order holding the submissions of the appellant as correct. This was done by way of OIA on 29.09.2021. This has consumed about 12 years from the date of the request of the appellant to take up the finalization.

26. The Adjudicating authority vide Order-in-Original No. AC/CUS/PDP/B-Cus Prev/124/2017 dated 21.05.2018, has rejected the claims of the appellant and passed the order rejecting their request for re-assessment and held that provisional assessment gets finalized. The relevant portions of the OIO reads as under:

As the exporter did not submit any evidence as to the percentage of moisture and Fe content available in the export consignment and the levy of export duty on Iron Ore Fines was dependant on the percentage of 'Fe' content, the Assistant Commissioner, Custom House, Paradeep ordered for provisional assessment of the Shipping Bills, and asked the exporter to execute a Provisional-duty-cum-Test Bond ("PD-cum-Test Bond in short). Consequent upon execution of a PD-cum-Test Bond registered under No. 624/2007-08 dated 29.02.2008 in the Customs House Bond Register and its acceptance, the Assistant Commissioner directed the concerned Superintendent of Customs, Paradeep to assess the Shipping Bills provisionally. XXXXXXXXXXXXXXXXXXXX. The representative samples from the export consignments were drawn by the Customs In presence of exporter's

representative under T.M.No.624/2007-08 dated 29.02.2008 for testing at Custom House Laboratory, Kolkata, The particulars of contract, PD Bond No, Test Memo No. etc. were mentioned in the Shipping Bills and then the Superintendent, Customs Paradeep appended an endorsement therein "Assessed Provisionally pending T/R and his dated signature in token of having assessed them. Thereafter, the shipment of goods on board the vessel MV Thrasyvoules V was allowed.

1.1 Upon receipt of necessary documents including Test Result of the samples from the Custom House Laboratory, the Assistant Commissioner ordered for finalisation of the provisional assessments and intimated the exporter under letter C.No.VIII-Cus- 51(299)/EXP/PDP/08/3160 dated 08.07.2014 that "the Shipping Bills which was assessed provisionally have been assessed finally on receipt of required documents; consequently, PD Bond has been redeemed." Thus, as per this order, the duty paid at the time of provisional assessment was held to be correct, hence no excess/short payment was ordered for refund/demand from the exporter.

1.4 The exporter vide Its letter No. VEDANTA/HO/CUST/17-18/53 dated 19.07.2017, submitted the copy of contract, copy of proforma Invoices, copy of both the Shipping Bills, copy of the Test Report of Quality Services & Solutions Pvt. Ltd, Goa, copy of Bill of Lading, No.1 & 2; copy of BRC, copy of Final Invoice, copy of duty calculation sheet and copy of O-I- A, for early decision of their case, by the Assistant Commissioner/ Deputy Commissioner, Paradeep Customs Division.

3.12 Since the exporter has not submitted the QSS certificate from its surveyor at any stage of the assessment of the shipping bills and that the certificate dated 31.03.2008 does not exclusively pertains to shipment made under the impugned two shipping bills, there is hardly any scope for accepting the same. In other words, if the customs house laboratory's test result as discussed in Para 3.2 is considered, then as per the above formula the percentage of Fe content as received basis" can be derived as under

% If Fe content on as received basis = $100 - 0.8/100 \times 63.7 = 63.19$

It is thus clear that since the Fe content of the Iron ore fine "as received basis" is 63.19%, then it would mean that the finalization of assessment of the shipping bills has been done correctly. In this view of the matter, the exporter appears to have no merit in the stand and the same is rejected.

27. From the above order dated 21.05.2018, it is seen that while the samples were drawn on 29.02.2008, as to why the assessment was kept pending till 8.7.2014, is not getting revealed. There is no whisper of the appellant submitting the requisite documents on 5.6.2009, requesting to finalize the assessment. There

is no mention of the PH conducted on 05.10.2009, written submissions made on 15.10.2009 and all the follow-ups made by the appellant before various authorities in 2014. As we have seen from the Customs Manual, it directs the authorities to complete the assessment within 6 months. As a matter of fact the Chapter 7, Para 3.1 of the Customs Manual specifies "The assessments must be finalized expeditiously, well within 6 months". The word used is "must be" and not 'may be'. This shows that the Board has made it clear that there should be no delay in finalizing the assessment. In the present case, it is on record that the appellant has executed the PD Bond, filed all the documents, the Revenue has drawn the sample in February 2008, but still has not finalized the assessment till 8.7.2014. On this issue, we will be discussing the subsequent paragraphs.

28. This OIO dated 21.05.2018, has not corrected any of the shortcomings of the earlier non-speaking order nor followed the directions given by the Commissioner (Appeals) in his Commissioner Appeals vide order 18/CUS/CCP/2016 dated 30.08.2016, as can be seen the extract of this OIA at Para 8 above.

29. The Commissioner (Appeals) vide OIA No.104/CUS/CCP/2021 dated 24.09.2021 has held that the provisional assessment is required to be finalized based on the documentary evidence provided by the appellant and has redetermined the assessment holding that the Export Duty payable would be @ Rs.50 PMT. The relevant extracts are as given below :

The Customs Dept also drawn representative sample from the export consignment under No. T.M. No: 624/2007-08 dated 29.02.2008. The samples have been tested in Customs Lab, Kolkata, and as per Test Report without dated the FE-content has been mentioned as Fe content was 63.7% on dry basis and Moisture 0.8%.

The Appellant Exporter, since 18.05.2009, is continuously following for the final assessments of both the above said shipping bills vide its various reminder letters- dated 01.10.2009, 15.12.2009, 27.01.2010, 05.02.2010, 05.02.2014, 19.03.2014, 11.04.2014, 06.05.2014, 02.06.2014, 26.10.2016, 23.01.2017, 21.02.2017, 03.03.2017, 04.01.2018.

a) The Customs Test Report received through RTI is appended herewith:

Test Memo No. 624/07-08 dt. 29.02.2008
Vessel Name - MV THRASYVOULOS V
The sample is in the form of dark brown coloured mixture of small lumps and powder. It is essentially composed of Iron together with associated other metallic elements and impurities. Moisture content is 0.8% by wt. Total Iron content is 63.7% by wt. on dry basis. It has the characteristic of Iron ore.

As per above test results of T.M. No. 624/2008 dated 29.02.2008 of Customs Laboratory, Kolkata showing Fe content 63.7% and Moisture 0.8% the Appellant submits as follows.

The Customs laboratory report is a cursory report and detailed conditions of moisture content and other impurities like silica and sulphur content of the cargo has not been pointed out as has been clearly mentioned in the other two reports. It may be stated that the presence of the said impurities has a significance to determine the Fe contents.

The samples were drawn on 29-02-2008. There is no mention of date of sending and date of examination by Chemical Examiners in the test report, so it is quite possible that substantial time have elapsed from the time of export to the date of testing. As moisture is not an inherent part of Iron ore hence moisture content of the iron Ore never remains constant, it varies from time to time depending on the atmospheric condition. Percentage of Iron Ore in the samples on “Samples as received basis” was not determined as the samples were travelled to Customs Lab situated to Kolkata after lapse of time, In such case there is much likelihood of evaporation of moisture and a test conducted after lapse of time would definitely will not give the same moisture content which was found at the time of export. This also proved with the factor that there are no major differences in Fe contents of all the reports whereas the moisture contents at load port and discharge ports are not in very much difference.

m)Moreover, the certificate produced by the appellant has been issued by a very reputed testing company. It is also to be mentioned that the learned AC has not challenged the validity of the Test Report of QSS, the fact that the sample was drawn in the presence of departmental officers, in such case there is no grounds of not accepting the test reports.

n)Besides this the sampling and testing of consignment was also done at the destination Port of China by Chinese Government agency (CIQ) on the lines of internationally accepted procedures, the test results of CIQ at the discharge port shown that the iron ore exported was 63.42% of Fe content and moisture @6.10%.

r)The analysis of the above export cargo has been done at the following agencies and at different points and the results are as follows.

Analysis at -	Pre-Shipment	Load Port	Discharge Port	Load Port
Agency-	Quality Services & Solutions Pvt. Ltd	Quality Services & Solutions Pvt. Ltd	Entry-Exit Inspection and Quarantine of the Republic of China	Customs Laboratory
Fe Content on Dry basis	63.50%	63.76%	63.42%	63.77%
Moisture	9.00%	6.20%	6.10%	0.80%
Fe Content on Wet basis	57.79%	59.81%	59.55%	63.26%

It is found that the Exporter has raised the Final Invoice based on Fe contents as Analysis Report at discharged port i.e. 63.42% on DMT, Moisture-6.10%, which is also below 62% in WET basis. The Exporter has also submitted CA Certificate in this regard certifying the receipt of payments as per Fe contents at Discharge Port.

25.I also have observed that the Appellants has received the Final Payments as per Test report issued by CIQ at destination Port, the Appellants have submitted the BRC and CA

Certificate from an Independent Chartered Accountant confirming the same. The Fe contents at declared by CIQ are 63.42% on DMT, Moisture-6.10%, which is also below 62% in WET basis as mentioned in Para 25.

26. Also, the Board has issued guidelines vide Circular No. 12/2014 dated 17.11.2014, specific to bring in uniformity, transparency and consistency in assessment of export of Iron Ore, fines and pellets-

2 (c) Upon receipt of the load port test report and discharge port test report the proper officer shall compare the two reports with the terms set out in the contract. Where variations in the two test reports are within tolerance limits provided in the contract and do not impinge upon the declared price, the proper officer may proceed to finalize the provisionally assessed shipping bill in terms of the provisions of Section 14 and the Customs Valuation (Determination of Value of Export Goods) Rules, 2007.

....

4. The Custom Houses shall monitor receipt of Bank Realisation Certificates for the purposes of comparison with the final invoices submitted by the exporter to satisfy the accuracy of assessed values.

27. It is observed that there is not much difference in Test Reports of Load Port and Discharge Port and the export proceed has been received as per Test Reports results of Discharge Port which is as per terms mentioned in contract. In such case non-acceptance of Test Certificates, issued by the Surveyor/ Assayer Quality Services and Solutions Pvt. Ltd. under certificate No. QSS/02/01/01406 dated 31.03.2008 at Load Port and inspection certificate of Quality dated 16 May 2008 issued by the Quarantine of the Republic of China at discharge port in China, are not justified.

In terms of the destination port certificate the iron content is less than 62%. It is seen that in the test report given by the destination Port as well as by M/s. Mitra S.K. Pvt. Ltd., the Chemical composition in terms of iron and other impurities is also given. Particularly, the moisture content is given even in the certificate given at China, destination Port. The proportion of other impurities like Aluminium, Silica, Aluminium oxide. Phosphorous, Moisture is given, whereas when one sees the reports of the Chemical Examiner, he had given only the percentage of iron and the other percentage is not known. It is not known how the percentage was calculated as to whether it was calculated after the moisture was removed or not or whether moisture was taken into account while calculating the percentage of iron. In any case, when a reputed company which has also been recognized by the Ministry of Commerce and Industries has given the test report and when that test report is in variance with the report of Chemical Examiner, the request of the appellant for re-test ought to have been considered favourably. This has not been done. This is utterly a denial of the Principles of 'Natural Justice'. In any case, we do not find any strong reason for rejecting the test report produced by the appellant from two sources, one from reputed testing organization and the other from the destination Port. The evidence also has been produced that payment has been made based on the test results at the destination Port. When it is less than 62% depending upon the shortage, the penalties have been paid by the exporter. In view of these factors, we find that the impugned order which has been passed in a very cursory manner without taking into account the submission of the party is liable to be set aside. In other words, the impugned

order has no merits. Hence, we allow the appeal with consequential relief. Thus the appeal and the cross objection are disposed of.

29.It is also observed that the Appellants has received the Custom Test Report through RTI only and Department has never shared the Customs laboratory Test Report or results of Custom Test Report to the Appellants, in such case the Appellants never had any opportunity to request for retest of the test samples.

30.The Customs, Excise & Service Tax Appellate Tribunal, Bangalore, in the matter of Steer Overseas Pvt. Ltd. Versus Commissioner of Customs, Central Excise, Visakhapatnam Final Order No. 905/2009, dated 2-4-2009 in Appeal No. C/600/2008 Equivalent 2010 (250) ELT 0308 (Tri. - Bang.) pronounced as below-

5. We have gone through the records of the case carefully. The iron content in the goods exported is 62% according to the Certificate produced by the appellant. The Inspection Certificate of Quality has also indicated the iron content less than 62% namely it is 60%. Only the test conducted by Custom House Laboratory indicated more than 62%. When the appellant requested for re-test of the sample, it should have been immediately acceded to. This was not done. This amounts to denial of the Principles of Natural Justice. Moreover, in testing samples of these types, time factor is important. If there is a long delay in testing the sample, due to evaporation of moisture, the test results would show increase in iron content, which will be unfavorable to the party. In these circumstances, we have to hold that the percentage declared by the appellant and confirmed at the destination port has to be taken as valid. Hence, we allow the appeal with consequential relief.

31.I found that both of above case law are applicable in current matter. The appellant Exporter have submitted various other case law in similar line.

35.Based on above, the Final Fe contents to be arrived by adopting the Test Certificate issued by the Surveyor/ Assayer – Quality Services and Solutions Pvt. Ltd. under certificate No. QSS/02/01/01406 dated 31.03.2008 at Load Port and inspection certificate of Quality dated 16 May 2008 by the Quarantine of the Republic of China discharge port at discharged Port in China and then converting the same in wet condition by adopting the mathematical formula as below-

Iron Content in Moist Condition =
$$\frac{\text{Fe X (100-M)}}{100}$$

Where Fe is %age of Iron content on dry basis, M is the moisture content in the Sample. The same is calculated as below-

Analysis at -	Loadport	Discharge Port
Agency-	Quality Services and Solutions Pvt. Ltd	Entry-Exit Inspection and Quarantine of the Republic of China
Fe Content on Dry basis	63.76%	63.42%
Moisture	6.20%	6.10%
Fe Content on Wet basis	59.81%	59.55%

36. As in both the cases, the Fe contents in moist / wet condition comes to below 60%, in such case the Exporter is eligible to claim exemption under Notification No 62/2007-Cus dated 03.05.07, and the applicable rate of export duty would be Rs. 50/- PMT. As the Exporter has already been paid Rs. 300/- PMT, he is eligible to get refund of Rs. 250/- PMT, which come to Rs. 1,07,91,250/-. The detailed refund calculation is attached herewith as Annexure-I.

30. From the above OIA, it is seen that the Commissioner (Appeals) has gone into the complete details of the Test Reports submitted by the appellant in respect of the Load Port and well as Test Reports of the Discharge Port. He has also applied the formula given by the Hon'ble Supreme Court in the case of Gangadhar Narsingdas. He has gone through the Bank Realization statement towards the remittance received by the appellant confirming the amount received is towards the Iron Ore Fe content of less than 62%. He has made clear reference to the delay in getting the Testing done by the Revenue through CRCL and also has noted that the relevant Test Reports of CRCL were never shared with the appellant, till the appellant got hold the same through the means of RTI. He has faulted the Revenue for this lapse and has cited case law to the effect that the non-supply of CRCL reply has effectively closed the door for the appellant to seek any re-test. Keeping in view all these detailed analysis, he has held that the provisional assessment is required to be finalized taking the Fe content has less than 62% and he has held that the Export Duty payable would @ Rs.50 PMT and not Rs.300 PMT.

31. We find that an higher official with rank of Commissioner (Appeals), with lesser staff at his disposal has undertaken painstakingly the above exercise , which was required to be taken by the Adjudicating authority, with much better infrastructure and manpower at his disposal. While we appreciate the efforts of the Commissioner (Appeals), the action of the Adjudicating authority is found to be lacking. As observed by us above, there is no iota of remorse about 4 + years wasted after the Personal Hearing was completed on 05.02.2010. There is no mention whatsoever of the appellant's correspondence beginning 18.05.2009 [5.6.2009] till 2014. Even after the Commissioner (Appeals) vide OIA dated 31.08.2016, the Adjudicating authority was simply delaying the finalization posing some queries once in a few months, so as to justify the delay. As against the time frame of 2 months given by the Commissioner (Appeals), the OIO was passed on 25.01.2018 after a delay of more than 18 months.

32. Recently before the Principal Bench – CETSTAT – Delhi the case of **Kopertek Metals Pvt. Ltd. Vs Commissioner of CGST (West) FINAL ORDER NO's. 59511-59720/2024 dated 25.11.2024** was decided . The issue to be decided was as to whether the Adjudicating authority is bound to pass the Order within any specified time or not. The relevant portion of this Order is reproduced below :

The Tribunal has considered several judgements of the High Courts and after that they have concluded as under :

25. It transpires from the aforesaid decisions that:

- (i)** The phrases “ as far as possible” and “as far as practicable” are more or less inter-changeable along with the word “feasible”;
- (ii)** Only when circumstances or insurmountable exigencies make it impracticable or not possible for the adjudication to take place within the stipulated period that the authorities may deviate from the time limit prescribed under the Statute;
- (iii)** The mandate of the legislature that the show cause notice should be adjudicated within six months or one year, as the case may be, only provides flexibility for extension of the period when it is not practicable or possible to adjudicate it within the said time limit. The time limit period cannot be extended endlessly without any plausible justification;
- (iv)** The indifference of the Adjudicating Authority to complete the adjudicating process within the statutory time limit cannot be condoned to the detriment of the assessee or detrimental to the interest of the exchequer;
- (v)** There is a definite purpose and intention of the legislature to prescribe such time limit. The legislature has clearly intended to avoid uncertainty, which otherwise can emerge; and
- (vi)** Even if no time limit is prescribed for adjudication of a show cause notice, then too the adjudication has to be done within a reasonable period. However, what would be a reasonable period would depend upon the nature of the Statute, rights and liabilities thereunder and other relevant factors.

27. The show cause notice, in the present case, was issued on 28.04.2015. It called upon the noticees to show cause within thirty days from the date of receipt of notice, failing which it was specifically provided that the matter would be adjudicated ex parte without any further communication. It is seen that the period one year from 28.04.2015 expired on 27.04.2016. Even if cause was not shown by the noticees to the said notice, the Adjudicating Authority should have proceeded to decide the matter ex parte, but what is seen is that the Adjudicating Authority even let this statutory time limit of one year pass without even adhering to the stipulation contained in the show cause notice that the matter would be decided ex parte even if no cause is shown within thirty days. It appears that it is only on 07.09.2016 i.e.

almost after a period of five months after the expiry of one year that the first hearing was fixed by the Adjudicating Authority on 07.09.2016.

42. The aforesaid discussion would lead to the inevitable conclusion that the impugned order would have to be set aside only for the reason that the adjudication was not completed within the time limit prescribed under sub-section (11) of section 11A of the Central Excise Act.

33. Similar issue was before the Hon'ble Delhi High Court in the case of **VOS Technologies India Pvt Ltd s The Principal Addl Director General – Judgement dated 10.12.2024**, wherein it has been held as under :

84. The position which thus emerges from the aforesaid discussion and a review of the legal precedents is that the respondents are bound and obliged in law to endeavour to conclude adjudication with due expedition. Matters which have the potential of casting financial liabilities or penal consequences cannot be kept pending for years and decades together. A statute enabling an authority to conclude proceedings within a stipulated period of time "*where it is possible to do so*" cannot be countenanced as a license to keep matters unresolved for years. The exibility which the statute confers is not liable to be construed as sanctioning lethargy or indolence. Ultimately it is incumbent upon the authority to establish that it was genuinely hindered and impeded in resolving the dispute with reasonable speed and dispatch. A statutory authority when faced with such a challenge would be obligated to prove that it.

34. We find that the time limit of six months fixed for the finalization of assessment as per the directions given at **Para 3.1 of Chapter 7 of the Customs Manual** was also considered in detail by the Hon'ble Jharkhand High Court for its applicability, in the following case:

**2024 (3) TMI 371 - JHARKHAND HIGH COURT
BIHAR FOUNDRY & CASTINGS LTD. Vs UNION OF INDIA**

5. In **W.P.(T) No. 5161 of 2022**, the Petitioner is challenging the legality and validity of the common *Order-in-Appeal* dated 10-08-2022. (Annexure "1") passed by the Commissioner (Appeal), GST, Central Excise & Customs, Bhubaneswar, the Respondent No. 3 by which he set aside the impugned *Order-in-Original* dated 19-11-2018 (Annexure-"2") and the impugned *Order-in-Original* dated 19-11-2018 (Annexure-"3") and remanded the matter back for de novo adjudication ignoring that the impugned Orders dated 19-11-2018 are barred by limitation of Six months *under* Section 28 (9) (a) of the *Customs Act, 1962* and also entire proceedings is carried out without Pre-Show Cause Notice consultation provided *under* Section 28 (1) (a) of the Act which provisions are mandatory and imperative in character and goes to the root of the matter.

6.xxxxxxxx

In respect of the Bill of Entry No. 260/HC/2011-12 Dated 20-03-2012 and Bill of Entry No. 261/HC/2011-12 dated 20-03-2012, the Finalization of Provisional Assessment was done after lapse of more than 6 years vide Final Assessment Order dated 03-04-2018 (Annexure-"10") and Final Assessment Order dated 03-04-2018 (Annexure-"11") respectively passed by the Assistant Commissioner, Customs Division, Dhamra.

7. Learned counsel further submits that being aggrieved with finalization of *provisional assessment* against the aforesaid 2 nos. of Bill of Entries, the Petitioner carried the matter into appeal before Commissioner (Appeal), Bhubaneswar Zone. Pending said two appeals, the Respondent No. 4, in respect of Bill of Entry No. 260/HC/2011-12 Dated 20-03-2012 after finalization of *provisional assessment* on dated 03-04-2018 issued the impugned Show Cause Notice dated 20-04-2018 (Annexure-"4") demanding differential Basic Customs duty of Rs. 24,69,401/- under Section 28 of the Customs Act, 1962 along with interest under Section 28AA of the Act on the ground that the imported 'Coal' is not "Steam Coal" falling under SH 27011920 but "Bituminous Coal" falling under SH 27011200 and the rate of applicable BCD is @ 5% ad-valorem under Sl. No. 124 of Customs Tariff Notification No. 12/2012-Cus dated 17-03-2012 and not NIL as claimed by the Petitioner under Sl. No. 123 of the said Notification.

11. He further contended that the Respondent No. 3 passed the impugned common Order-in-Appeal dated 10-08-2022 bearing No. 113-114/CUS/CCP/2022 (Annexure-"1") and set aside Order-in-Originals, both dated 20-04-2018 (Annexure "2" & Annexure-"3"), and remanded the matter back for denovo adjudication ignoring that the adjudication orders are barred by limitation under section 28(1)(a) of the Act

13. Mr. Kurmi contended that upon *provisional assessment* of the aforesaid 4 Bill of Entries, the finalization of *assessment* was kept pending in suspended animation sine die for 6 years to 9 years by the Respondent No. 4. The "CBIC Customs Manual of Instructions" under Chapter 7 which deals with Provisional Assessment, it is mandated by the CBIC Respondent No. 2, under Para 3.1 that, the provisional assessment is expected to be finalized expeditiously well within 6 months. In respect of the two Bill of Entry No. 158/HC/2012-13 dated 17-07-2012 and Bill of Entry No. 341/HC/2012-13 dated 26.11.2012 the *Finalisation of Provisional Assessment* was done after lapse of more than 9 years vide Final Assessment Order dated 26.06.2021 (Annexure "2") and Final Assessment Order dated 20/21.09.2021 (Annexure-"3").

17.xxxxxx

In W.P.(T). No. 5161 of 2022,

the two Show Cause Notices (issued under Section 28 of the Customs Act, 1962, issued after finalization of *Provisional Assessment*) & Order-in-Original issued against

two Bill of Entries No. 260/HC/2011-12 & No. 261/HC/2011-12 and 1st Appellate Order against Order-in-Original are the subject matter of challenge.

18. Against, the other two Bill of Entries No. 158/HC/2012-13 & No. 341/HC/2012-13 which are among the four nos. of Bill of Entries *under* challenge in 1st W.P.(T) No. 4340 of 2022, no show cause notice has yet been issued even after lapse of 10 years from the date of *provisional assessment*. From record it is further evident that there is delayed finalization of the provisional Bill of Entries No. 158/HC/2012-13, Bill No. 341/HC/2012-13, Bill No. 260/HC/2011-12 & Bill No. 261/HC/2011-12; however, the same is contrary to Para 3.1 of “Chapter 7 Provisional Assessment” of CBIC Manual of Instructions which is issued by the CBIC in exercise of powers under Section 151A of the Customs Act, 1962 and which is binding on the Respondent. For brevity, the same is quoted herein below: –

3. Finalisation of provisional assessment :

3.1 The provisional assessments are expected to be finalized expeditiously, well within 6 months. However, in respect of cases involving machinery contracts or large project imports, where imports take place over long period, such finalisation may take more time since action to can be taken only after all the imports have been made. Here too, effort should be made to finalise the cases within 6 months of the date of import of the last consignment covered by the contract.

[Refer Instructions F. No. 512/5/72-Cus.VI, dated 23-4-1973; and F. No. 511/7/77-Cus.VI, dated 9-1-1978 and Circular No. 17/2011-Cus., dated 8-4-2011]

19. At this stage, it is necessary to refer the case of **Commissioner of Customs Vs. Indian Oil Corporation reported in 2004 (165) ELT 257 (SC)**, wherein it has been held by the Hon’ble Apex Court that the Revenue cannot raise a contention contrary to binding circular by the Board when circular remains in operation, Revenue is bound by it (Para – 12). As per Para 3.1 of the said CBIC instruction, the Bill of Entries are to be finalized expeditiously well within 6 months. In the instant case, the finalization of provisional assessment is governed by Para 3.1 of the CBIC Instruction which is the reasonable period as under Section 18 of the Customs Act, 1962. It is true that under Section 18 of the Customs Act, no period of limitation is prescribed, however, finalization should be done within reasonable period of limitation. Reference may be made to the case of **K.B. Nagur, M.D. (Ayurvedic) Vs. UOI reported in (2012) 4 SCC 483 (Para 38)]**.

21. It is not out of place here to mention that Rule 5 of Customs (Finalization of Provisional Assessment) Regulation, 2018 (the 2018 Regulation) applies only to provisional assessment made after 14-08-2018; hence, in the case at hand it cannot be applied on the provisional assessments of the 4 Bill of Entries as they are

made in the year 2012. The limitation for finalization to the case at hand would be governed by Para 3.1 of the CBIC Instruction as per which the finalization of provisional assessment is to be made expeditiously, well within 6 months whereas in the instant case the finalization is done after 6 years to 9 years.

The Punjab & Haryana High Court in the case of **Golden Enterprises Vs. CC reported in 2022 (379) E.L.T 334 (P&H)** under the Customs Act, 1962 while dealing with similar circumstances following its earlier judgment in the case of **Gupta Smelters Pvt. Ltd Vs UOI reported in 2019 (365) ELT 77, M/s GPI Textiles Vs. UOI reported in 2018 (362) ELT 388 (P&H)** and judgment of the Gujarat High Court in the case of **M/s Siddhi Vinayak Syntex Pvt. Ltd Vs. UOI reported in 2017 (352) ELT 455 (Guj)** wherein the finalization of provisional assessment after 8-9 years from the date of Bill of Entry was quashed considering that there was no petition by the Petitioner pending before Competent Court nor was any stay of any court, thus, there was no reason to withhold framing of final assessment.

22. Further, in the case of **Tata Teleservices Ltd Vs. State of Chhattisgarh reported in 2022 (381) E.L.T 145 (S.C)** the Hon'ble Apex Court has held that point of limitation is point of jurisdiction and it goes to the root of the matter. In the instant case; out of the 4 nos. of Bill of Entries, the Bill of Entry No. 158/HC/2012-13 was provisionally assessed on 17-07-2012 under Section 18 of the Customs Act, 1962 which was finally assessed after 9 years on 26-06-2021 (Annexure – 2).

24. Having regards to the aforesaid discussions we hold that the 1st Appellate Order dated 10-08-2022 which is challenged along with validity of aforesaid two show cause notices both dated 20-04-2018 and two adjudication Orders, both dated 19-11-2018, under Section 28 [against Bill of Entry No. 260/HC/2011-12 and Bill of Entry No. 261/HC/2011-12 respectively] is not sustainable in the eye of law and legal proposition settled by the Hon'ble Apex Court and various High Courts on the ground that both the adjudication orders dated 19-11-2018 are passed after expiry of mandatory period limitation of 6 months as provided under Section 28(9)(a) of the Customs Act, 1962; further, the impugned two SCNs dated 20-04-2018 are issued without Pre-SCN consultation as mandated under proviso to Section 28(10)(a) of the Customs Act, 1962.

35. We find that the Hon'ble High Court has noted that formal time frame towards finalization of provisional assessment came to be brought in by way of Rule 5 of Customs (Finalization of Provisional Assessment) Regulation, 2018 (the 2018 Regulation), which the Court held 'applies only to provisional assessment made after 14-08-2018'. However, for the prior period, it was held that the time limit fixed in terms of Para 3.1 of the Chapter 7 of the Customs Manual is very much binding on the authorities. It is observed that the finalization was taken up after 6 years / 9 year as against the direction to complete the same

within 6 months was clearly noted and considered while allowing the Writ Petition.

36. The above decisions of the CESTAT Delhi, Delhi High Court and Jharkhand High Court, go on to show that the authority given the task of adjudicating the matter cannot take his own time when the time frame has been specifically provided, either under Section 11A (11) of the CEA 1944 or as per the time frame given in the Customs Manual, if the assessment under Customs is done for the period prior to 14.08.2018. We find that the ratio laid down in the cited decisions would be squarely applicable in the present case. The factual matrix in the present case proves that there was inexplicable delay of more than 4 years at the very first stage when the assessment was finalized by an order dated 14.07.2014, which has been held as a 'non-speaking order' in no uncertain terms of by the Commissioner (Appeals) vide OIA dated 31.8.2016. After this while a specific time-frame of Two months was given by the Commissioner (Appeals), still about 16 months was taken to issue the OIO on 25.01.2018, wherein the finalization was done without following the directions of the Commissioner (Appeals). Subsequently, another pathetic development arose, when the post of Commissioner (Appeals) was vacant, making the appellant to take recourse to address a letter to the CBIC to fill up the vacancy. Finally, by way of OIA dated 29.09.2021, the issues raised by the appellant were properly addressed and after undertaking proper verification and thorough scrutiny of the documentary evidence placed before him, the Commissioner (Appeals), finalized the assessment and held that the Export Duty is payable @ Rs.50 PMT and not @ Rs.300 PMT. Thus, the assessment was finally completed in about 12 years.

37. We have also gone through the relevant case laws on the issue of importance of following the instructions / directions contained in the CBEC Manual / Circulars was also a matter of issue before the Tribunal / High Court in the following cases:

2014 (300) E L T 451 (Tri. - Del.)

**ACCURATE CHEMICALS INDUSTRIES
Vs CCE NOIDA**

7. The second question is of the limitation. The period of dispute is from 2002-2003 to 2005-2006. The show cause notice had been issued on 16-8-07 i.e. beyond the normal limitation period of one year from the relevant date. The show cause notice, therefore, would be valid only if extended period under proviso to Section 11A(1) is invocable for which it has to be proved that the short levy had taken place due to fraud, wilful misstatement, suppression of facts or contravention of any provisions of the Central Excise Act, 1944 or of the Rules made thereunder with intent to evade the payment of duty. On going through the records, we find that all the sample invoices placed on record clearly mention that the appellant unit is owned by M/s. Accurate Transformers Ltd. and that their clearances to M/s. Accurate Transformers Ltd., Ghaziabad are for captive

consumption. Though invoices are not required to be enclosed along with the ER-1 returns, the ER-1 returns were being filed by the appellant.

7.1 Though with effect from 1-10-1996, self-assessment has been introduced and the monthly ER-1 return filed by an assessee are not required to be assessed by the Range Superintendent (RO), in terms of the following instructions issued by the Central Board of Excise & Customs (CBEC) not only every ER-1 return filed by an assessee is required to be scrutinized by the RO for correctness of rate of duty applied to the goods cleared, arithmetical accuracy of duties/amounts dues and payable; Cenvat credit availment, valuation etc., this scrutiny must be completed within 3 months and the returns of the units whose annual duty payment is Rs. 1 crore to Rs. 5 crores and more than Rs. 5 crores, are also to be cross checked by the Assistant Commissioner and Additional Commissioner, respectively.

- (1) Circular No. 249/83/96-CX., dated 11-10-1996 (para 3);
- (2) Circular No. 311/27/97-CX., dated 15-4-1997 (regarding maintenance of register of scrutiny and reporting progress of scrutiny of ER-1 returns in monthly Technical Report being sent to the Board.)
- (3) Circular No. 818/15/2005-CX., dated 15-5-2005 issued by C.B.E. & C. under Rule 12(3) of Central Excise Rules, 2002 prescribing two stage scrutiny of ER-1 and ER-3 returns - preliminary scrutiny and detailed scrutiny as per detailed check list prescribed for this purpose.

7.2 From the above Circulars of the C.B.E. & C. regarding scrutiny of ER-1 returns, it is clear that the returns filed by an assessee are required to be subjected to detailed scrutiny in course of which the concerned officer can call for the documents from the assessee wherever necessary for scrutiny. Therefore in this case, if the concerned Range officer/Assistant/Deputy Commissioner or concerned Additional Commissioner had checked the returns, the short payment would have been immediately detected as, as observed by the Commissioner in para 4.5 of the impugned order, even the registration certificate of the appellant mentioned them as a unit of Accurate Transformers Ltd., and in all the documents of the appellant, the transfer of goods from the appellant to Accurate Transformer Ltd. had been reflected as inter unit transfer. Neither there is any allegation nor evidence to prove that there was some collusion between the appellant and the Jurisdictional Central Excise officers. The short payment was detected when during visit by the audit team, the records maintained by the appellant and made available by them to the audit officers were examined by them, - something which should have been done by the Jurisdictional Range Officers and Divisional Assistant Commissioner/Deputy Commissioner much earlier. The assessee cannot be penalized by invoking extended period under proviso to Section 11A(1) for demand of duty and penal provisions of Section 11AC for indolence on the part of the jurisdictional Central Excise officers.

Tribunal's decision affirmed by High Court :

**2014 (310) E L T 441 (All.)
COMMISSIONER OF C. EX., NOIDA
Vs ACCURATE CHEMICAL INDUSTRIES**

6. Having considered the judgment of the Tribunal, we see no reason to interfere with the finding of fact that if a scrutiny had been made by the Range Officer of the ER-1 returns, that would have revealed that the assessee had cleared its MS tanks and radiators to the owning company for the manufacture of transformers. This indicated that there was no fraud, collusion, misstatement or suppression of facts. Besides, since the situation was revenue neutral, no intent to evade the payment of duty could be ascribed to the assessee. Once, there was no intent to evade the payment of duty, the Tribunal was justified in coming to the conclusion that the extended period of limitation under the proviso to Section 11A(1) of the Act, would not be attracted. Hence, no substantial question of law arises in the appeal. It is, accordingly, dismissed

**2014 (312) E L T 353 (Tri. - Ahmd.)
[3rd Member Reference Bench]
STERLITE TELELINK LTD. Vs CCE VAPI**

27. There is no dispute that the appellant herein availed Cenvat credit of Rs. 21,69,668/- based upon the supplementary invoice No. 1199, dated 5-12-2001 raised by the supplier, incidentally sister concern of the appellant. It is also on record and undisputed that the appellant herein had filed monthly ER-1 return for Feb. 2001 to authorities in time. At this juncture, I have to refer to the Supplementary Instructions of C.B.E. & C. and more specifically Chapter VI which relates to scrutiny of the assessment. I am reproducing the same below :

**Part VI
SCRUTINY OF ASSESSMENT**

1. Introduction

1.1 In view of the self-assessment procedure wherein the assessee himself assesses the duty liability the responsibility of the departmental officers is to scrutinise the assessment made for verification of its correctness.

2. *Scrutiny of Assessment*

2.1 The Central Excise officers having jurisdiction over the factory/premises of the assessee is responsible for the scrutiny of returns. For this purpose, the said officer(s) may require the relevant documents. Though the statutory records have been dispensed with, the assessee is required to maintain private records containing all requisite information as required by different rules and also provide a list of all records maintained by him to the Range Office. The Officer responsible for scrutiny of return may require the invoices issued by the assessee, Daily Stock Account, Cenvat account, Cash ledgers, Ledger of all receipts and payments and the source

documents etc. It shall be compulsory for the assessee to provide the necessary records upon receiving the "Requisite Letter" from the Range Officer or other superior officers. He shall hand over the records under proper acknowledgement and receive them back under proper acknowledgement too. The Officer scrutinizing return may require presence of the assessee or his authorised person at mutually convenient time, for seeking certain information relating to the records.

2.2 The Superintendent of Central Excise in charge of the Range Office with assistance of the Inspectors in charge of the factory of an assessment scrutinise all the returns. They shall, in selected cases, call all connected documents including invoices and the records and scrutinise the correctness of assessment.

2.3 The Deputy/Assistant Commissioner of Central Excise will scrutinise the returns of the units, which pay duty-exceeding rupees one crore but less than Rs. 5 crores from PLA per annum every six months. *They shall requisition all connecting documents including invoices and the records and scrutinise the correctness of assessment.*

2.4 The Additional/Joint Commissioner of Central Excise will scrutinise the returns of the units which pay duty of Rs. 5 crores or more from PLA per annum every six months. They shall requisition all connecting documents including invoices and the records and scrutinise the correctness of assessment."

(Emphasis Supplied)

28. It can be seen from the above reproduced instructions given to the authorities that C.B.E. & C. had mandated the Central Excise Officers to scrutinise the returns and shall call for the documents from the assessee, the important aspect in the instructions is that the Central Excise officers *shall requisition all connecting documents*. It is on record that the officers in this case did not, at any point of time, called for any record or sought any clarification from the assessee. It is seen that the lower authorities have recorded a statement of Shri T. Baburaman, Authorised Signatory of the appellant under Section 14 of Central Excise Act, 1944. On reading of the said statement, I find that Shri Baburaman has categorically stated that they were not aware of the circumstances under which the supplementary invoice No. 1199, dated 5-12-2001 was issued by their sister concern from Aurangabad. On the basis of said statement, show cause notice which was issued to the current appellant, had alleged as under :

"It appears that the Silvassa unit was fully aware of the fact that their Aurangabad unit had raised supplementary invoice No. 1199, dated 5-12-2001 after the Central Excise Preventive officers of Aurangabad (HQrs) pointed out short payment of duty on goods that were earlier supplied to their unit, and they had taken Cenvat credit on supplementary invoices issued by their Aurangabad unit for differential duty paid by Aurangabad unit. The Silvassa unit had also not informed the department before or after taking such Cenvat credit of Rs. 21,69,668/- on the basis of the said supplementary invoices. Such type of act is nothing but suppression of true facts from the Department by the

unit with intent wrongly avail the Cenvat credit and to evade payment of duty by utilising wrongly availed Cenvat credit.”

29. It can be seen from the above reproduced allegation in the show cause notice and tenor of the show cause notice that the demand of reversal of Cenvat credit from the appellant is based upon the provisions of Rule 7(1)(b) of Cenvat Credit Rules, 2002 while alleging that the appellant had not disclosed why they are availing Cenvat credit on the basis of supplementary invoices. The reasoning of both the lower authorities in confirming the demand of reversal of Cenvat credit is incorrect for more than one reason and first and foremost reason is that the appellant was not required to inform bank regarding availment of Cenvat credit on the basis of supplementary invoice to the authorities once they are filing return with the authorities, which was so done correctly by the assessee.

30. Secondly, statement of authorised signatory on 13-9-2002 also clearly indicates that the person who was entering Cenvat credit based on the supplementary invoice, had categorically stated that they were not aware of the circumstances under which supplementary invoice was issued. Subsequent development at the end of supplier cannot be held against the assessee for denial of Cenvat credit taken by him on the proper duty paying documents. As has already been reproduced by me herein above, the supplementary instructions clearly indicate that the monthly returns shall be scrutinised by lower authorities which was not done in this case. Further, I find that the reading of Rule 7(1)(b) of Cenvat Credit Rules, 2002, would not carry the case of Revenue any further, as the appellant herein was not aware as to the reasons or circumstances under which supplementary invoice was issued; which is on record by way of statement recorded under Section 14 of Central Excise Act, 1944. In the absence of knowledge under which circumstances the said supplementary invoice was issued, no motive can be attributed to the assessee and the show cause notice invoking extended period of time against the assessee is, in my view, is time barred. Since I am holding that show cause notice issued to the current assessee is time barred, I am in agreement with the view taken by Id. Member (Judicial), holding that the entire demand falls as being time barred. Since the entire demand becomes time barred, there is no question of imposition of penalties on other company as well as other appellants.

38. From the above case laws, it is seen that the directions given in the CBEC Manual / Circulars are required to be followed by the Revenue officials. Though the scrutiny as such or procedure thereto have not been provided for in the Section of the Act or the Rules framed thereunder, still it is held that if these directions / instructions are not followed, the concerned issue would be fatal to the case of the Revenue. Thus, the directions / instructions contained in the CBEC Manual and Circulars issued have been given equal importance as is to be given to the directions contained in the Section / Rules.

39. Therefore, we find that ratio laid down in all the cases cited supra about the importance / sanctity of the CBEC Manual / Circulars, can be applied to the present

case also. As per our detailed discussion on the factual matrix and the statutory provisions, directions of the Customs Manual, read with the ratio of the decisions of the Tribunal and High Court, we hold that the Revenue would be responsible for the delay of over 12 years in finalizing the Assessment. Consequently, interest is required to be paid to the appellant.

40. The Revenue cannot take the stand that the Assessment was finalized only on 29.09.2021 and hence in terms of Section 18(4) of the Customs Act 1962, the interest is not payable, without having any plausible defence towards the delay of more than 12 years to complete the Finalization.

41. After the Finalization of assessment, if it is held that higher Duty has been paid, would refund to be granted immediately without there being any requirement for the appellant to seek such refund by filing any refund claim. The appellant, vide their letter dated 30.09.2021 and 6.1.2022, have sought the consequential refund. But in order to avoid any further delay in getting refund the appellant has filed the Refund Claim under Form 102 on 12.01.2022, which is not required to be filed in the first place. Now taking the stand that Refund claim has been filed on 12.01.2022 and the refund was granted on 12.04.2022, i.e. within 3 months, the Revenue is justifying the non-payment of interest in this case. The appellant, already having run from pillar to post for the last 14 years, in order to avoid further delay. Unfortunately, even the Commissioner (Appeals), fails to consider the chronological events, which clearly point out to the inexplicable time lapses on the part of the Revenue, while dismissing the appeal.

42. In view of the forgoing discussions, we hold that the appellant is required to be granted the interest for the refund granted to them belatedly after more than 14 years.

43. It would important to go through the relevant portions of the following orders :

(a) OIO dated 08.04.2022, granting refund of Rs. Rs. 1,07,91,250 :

3.0. TIME BAR:-

As regards time bar, I find the claim in this case is well within 1 year of the date of Order of Commissioner (Appeals) and do not fail on time bar ground i.e. the refund claim/ application was filed on 12.01.2022 for the purpose of Section 27 of the Customs Act, 1962, as against Order of Commissioner (Appeals) issued on 29.9.2021.

4.0. UNJUST ENRICHMENT:-

As regards to the bar on unjust enrichment as provided under proviso to sub-section (2) of Section 27 of the Customs Act, 1962, I find that under Section 27(2)(d) the principle of unjust enrichment is not applicable to the refund of export duty. Further, the incidence of burden of excess Customs duty appears to have not been passed on by the exporter/ claimant to any other person as per the certificate of the Chartered Accountant submitted by the exporter vide their letter dated 23.1.2021.

I find that the contract for sale and export of Iron ore, the invoice raised for sale of Iron ore were verified to check whether the incidence of export duty has been passed on the buyer or not. In the invoices, the exporter has not charged export duty separately to the buyers. The FOB price, as it is seen from the contract, is independent of export duty leviable and it is evident that the incidence of duty is not passed on to any other person as per the terms of the contract.

In view of the above the excess duty paid by the exporter appears refundable to the applicant as per section 27 of the Customs Act, 1962 and the claim is not hit by the unjust enrichment bar as there was no passing on the burden to foreign buyer/ any other buyers as per Section 27(2)(d) of the Customs Act, 1962.

(b) OIO No. EXP/REF/03/PDP/2023 dated 13.02.2023 – rejecting interest request :

3.1. The Commissioner (Appeals) in his Order-in-Appeal No. 104/CUS/CCP/2021 dated 24.09.2021 has also decided that the refund would be governed by Section 27 of the Customs Act, 1962.

3.2. Consequent to such order, the claimant had filed the refund application on 12.01.2022 and the refund amount was sanctioned on 08.04.2022 i.e., within 3 months of the date of filing of refund by the proper officer. Section 27A of Customs Act, 1962 has laid down provision of payment of interest in case of delayed refund sanction under Section 27 of the Customs Act, 1962. Section 27A of the Customs Act, 1962, reads as under:

27A. Interest on delayed refunds. - If any duty ordered to be refunded under subsection (2) of section 27 to an applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate, ⁴⁸[not below five percent.] and not exceeding thirty percent per annum as us for the time being fixed ⁴⁹[by the Central Government by Notification in the Official Gazette], on such duty from the date immediately after the expiry Of three months the date of receipt of such application till the date of refund of such duty:

Provided that where any duty, ordered to be refunded under sub-section (2) on section 27 respect of an application under sub-section (1) of that section

made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant Interest under this section from the date immediately after three months from such date, till the of refund of such duty.

3.5. In the instant case, the payment of refund has been made within the statutory period of 3 months from date of application by the exporter/claimant. Therefore, no interest is payable under Section 27A of the Customs Act, 1962 which governs the payment of interest.

(c) OIA No. 69/CUS.CCP/2023 dated 29.05.23 – dismissing the Appeal seeking interest :

39. Regarding Appellant's claim for interest, basis delay and no action on their requests, for claiming the interest on delayed refund the relevant provisions of the Section 18(4) are as below-

(4) Subject the sub-section (5), if any refundable amount referred to in clause (a) of sub-Section (2) is not refunded under that sub- Section **within three months from the date of assessment**, of duty finally or re-assessment of duty, as the case may be, there shall be paid an interest on such un-refunded amount at such rate fixed by the Central Government under section 27A till the date of refund of such amount.

As the Customs law permit the interest only in the case, if the refunds have not been paid with in a period of 3 months. The interest on delayed refunds can be allowed once the refunds are concluded by order.

The Appellants submitted refund claim application in Form 102 on 12.01.22 and the refund claim has been disbursed on 12.04.2022.

Comm Appeal Order Date	Assessment Requested by Vedanta	Refund Claim Submitted by Vedanta	Assessment Order date	Refund Order / Cheque Date	Total Days from refund claim Application	Delay beyond three months
24.09.21	30.09.21	12.01.22	08.04.22	12.04.22	90 / Ninety days	NIL

The refund claim has been sanctioned within in a period of three months, so there no delay in disbursing refund amount, hence no interest is payable in account of delay in disbursing of refund claim application.

40. Prior to Commissioner Appeals Order for allowing refunds, there is no such order exist for refunds, in such case interest under Section 18(4) cannot be allowed in account of delay in Final Assessment.

44. From the reading of the above orders, we observe that the consequent refund upon finalization of assessment has been subjected to the provisions of Section 27 of the Customs Act 1962. This is decipherable from the fact that the 'Time Bar' and 'Unjust Enrichment' issues were also verified and found not to be applicable to the refund. Therefore, we conclude that the refund has been granted in terms of Section 27 of CA 1962.

45. As we have come to a conclusion that the amount has been refunded in terms of Section 27, it would be important to go through the Supreme Court's judgement in the case of **Ranbaxy Laboratories Ltd vs Union Of India & Ors vide Order dated 21 October, 2011**. The relevant portions of this judgement are extracted below:

The core issue which confronts us in all these appeals relates to the question of commencement of the period for the purpose of payment of interest, on delayed refunds, in terms of Section 11BB of the Central Excise Act, 1944 (for short "the Act"). In short, the question is whether the liability of the revenue to pay interest under Section 11BB of the Act commences from the date of expiry of three months from the date of receipt of application for refund or on the expiry of the said period from the date on which the order of refund is made?

The appellant filed certain claims for rebate of duty, amounting to Rs.4,84,52,227/- between April and May 2003. However, the Assistant Commissioner of Central Excise, vide order dated 23rd June 2004, rejected the claim. Aggrieved, the appellant filed an appeal before the Commissioner, Central Excise (Appeals), who by his order dated 30th September 2004 allowed the appeal and sanctioned the rebate claim. Being aggrieved by the said order, the revenue filed an appeal before the Joint Secretary, Government of India, Ministry of Finance, but without any success. Ultimately rebate was sanctioned on 11th January, 2005. On 21st April 2005, appellant filed a claim for interest under Section 11BB of the Act on account of delay in payment of rebate

Section 11BB, the pivotal provision, reads thus:

"11BB. Interest on delayed refunds.- If any duty ordered to be refunded under sub- section (2) of section 11B to any applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate, not below five per cent and not exceeding thirty per cent per annum as is for the time being fixed by the Central Government, by Notification in the Official Gazette, on such duty from the date immediately after the expiry of

three months from the date of receipt of such application till the date of refund of such duty :

Provided that where any duty ordered to be refunded under sub-section (2) of section 11B in respect of an application under sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such duty.

Explanation : Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal or any Court against an order of the Assistant Commissioner of Central Excise, under sub-section (2) of section 11B, the order passed by the Commissioner (Appeals), Appellate Tribunal or, as the case may be, by the Court shall be deemed to be an order passed under the said sub-section (2) for the purposes of this section."

9. It is manifest from the afore-extracted provisions that Section 11BB of the Act comes into play only after an order for refund has been made under Section 11B of the Act. Section 11BB of the Act lays down that in case any duty paid is found refundable and if the duty is not refunded within a period of three months from the date of receipt of the application to be submitted under sub-section (1) of Section 11B of the Act, then the applicant shall be paid interest at such rate, as may be fixed by the Central Government, on expiry of a period of three months from the date of receipt of the application. The Explanation appearing below Proviso to Section 11BB introduces a deeming fiction that where the order for refund of duty is not made by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise but by an Appellate Authority or the Court, then for the purpose of this Section the order made by such higher Appellate Authority or by the Court shall be deemed to be an order made under sub-section (2) of Section 11B of the Act. It is clear that the Explanation has nothing to do with the postponement of the date from which interest becomes payable under Section 11BB of the Act. Manifestly, interest under Section 11BB of the Act becomes payable, if on an expiry of a period of three months from the date of receipt of the application for refund, the amount claimed is still not refunded. Thus, the only interpretation of Section 11BB that can be arrived at is that interest under the said Section becomes payable on the expiry of a period of three months from the date of receipt of the application under Sub-section (1) of Section 11B of the Act and that the said Explanation does not have any bearing or connection with the date from which interest under Section 11BB of the Act becomes payable.

11. At this juncture, it would be apposite to extract a Circular dated 1st October 2002, issued by the Central Board of Excise & Customs, New Delhi, wherein

referring to its earlier Circular dated 2nd June 1998, whereby a direction was issued to fix responsibility for not disposing of the refund/rebate claims within three months from the date of receipt of application, the Board has reiterated its earlier stand on the applicability of Section 11BB of the Act. Significantly, the Board has stressed that the provisions of Section 11BB of the Act are attracted "automatically" for any refund sanctioned beyond a period of three months. The Circular reads thus:

"Circular No.670/61/2002-CX, dated 1-10-2002 F.No.268/51/2002-CX.8 Government of India Ministry of Finance (Department of Revenue) Central Board of Excise & Customs, New Delhi Subject : Non-payment of interest in refund/rebate cases which are sanctioned beyond three months of filing - regarding I am directed to invite your attention to provisions of section 11BB of Central Excise Act, 1944 that wherever the refund/rebate claim is sanctioned beyond the prescribed period of three months of filing of the claim, the interest thereon shall be paid to the applicant at the notified rate. Board has been receiving a large number of representations from claimants to say that interest due to them on sanction of refund/rebate claims beyond a period of three months has not been granted by Central Excise formations. On perusal of the reports received from field formations on such representations, it has been observed that in majority of the cases, no reason is cited. Wherever reasons are given, these are found to be very vague and unconvincing. In one case of consequential refund, the jurisdictional Central Excise officers had taken the view that since the Tribunal had in its order not directed for payment of interest, no interest needs to be paid.

13. We, thus find substance in the contention of learned counsel for the assessee that in fact the issue stands concluded by the decision of this Court in U.P. Twiga Fiber Glass Ltd. (supra).

In the said case, while dismissing the special leave petition filed by the revenue and putting its seal of approval on the decision of the Allahabad High Court, this Court had observed as under:

"Heard both the parties. In our view the law laid down by the Rajasthan High Court succinctly in the case of J.K. Cement Works v. Assistant Commissioner of Central Excise & Customs reported in 2004 (170) E.L.T. 4 vide Para 33:

"A close reading of Section 11BB, which now governs the question relating to payment of interest on belated payment of interest, makes it clear that relevant date for the purpose of determining the liability to pay interest is not the determination under sub- section (2) of Section 11B to refund the amount to the applicant and not to be transferred to the Consumer Welfare Fund but the relevant date is to be determined with reference to date of application laying claim to refund. The non- payment of refund to the

applicant claimant within three months from the date of such application or in the case governed by proviso to Section 11BB, non-payment within three months from the date of the commencement of Section 11BB brings in the starting point of liability to pay interest, notwithstanding the date on which decision has been rendered by the competent authority as to whether the amount is to be transferred to Welfare Fund or to be paid to the applicant needs no interference."

14. At this stage, reference may be made to the decision of this Court in Shreeji Colour Chem Industries (supra), relied upon by the Delhi High Court. It is evident from a bare reading of the decision that insofar as the reckoning of the period for the purpose of payment of interest under Section 11BB of the Act is concerned, emphasis has been laid on the date of receipt of application for refund. In that case, having noted that application by the assessee requesting for refund, was filed before the Assistant Commissioner on 12th January 2004, the Court directed payment of Statutory interest under the said Section from 12th April 2004 i.e. after the expiry of a period of three months from the date of receipt of the application. Thus, the said decision is of no avail to the revenue.

15. In view of the above analysis, our answer to the question formulated in para (1) supra is that the liability of the revenue to pay interest under Section 11BB of the Act commences from the date of expiry of three months from the date of receipt of application for refund under Section 11B(1) of the Act and not on the expiry of the said period from the date on which order of refund is made.

46. The above judgement of the Hon'ble Supreme Court has been rendered in respect of the refund claimed under Section 11B and interest under Section 11 BB of the Central Excise Act 1944. It would be important to go through the relevant portions of Customs Act 1962, as it existed during the period under litigation, with regard interest, which is extracted below:

27A. Interest on delayed refunds. *[Inserted by Act 22 of 1995, Section 55 (w.e.f. 26.5.1995).]*- If any duty ordered to be refunded under sub-section (2) of section 27 to an applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate, [not below five per cent.][and not exceeding thirty per cent. per annum as is for the time being fixed [by the Central Government, by notification in the Official Gazette] *[Inserted by Act 22 of 1995, Section 55 (w.e.f. 26.5.1995).]*,on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty:

Provided that where any duty, ordered to be refunded under sub-section (2) of section 27 in respect of an application under sub-section (1) of that section made

before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such duty.

Explanation.- Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal or any Court against an order of the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] *[Inserted by Act 22 of 1995, Section 55 (w.e.f. 26.5.1995).]* under sub-section (2) of section 27, the order passed by the Commissioner (Appeals), Appellate Tribunal [, National Tax Tribunal] *[Inserted by Act 22 of 1995, Section 55 (w.e.f. 26.5.1995).]* or, as the case may be, by the Court shall be deemed to be an order passed under that sub-section for the purposes of this section.]

47. A careful reading of Section 11BB of the CEA 1944 and 27A of the Customs Act 1962, clarifies that they are *para materia*.

48. Reverting to the factual matrix of this case, the important dates in the entire case would be as under :

Event	Period / Date	Delay from 06.05.2009
Export Duty paid @ Rs.300 PMT	Feb / Mar 2008	NIL
Request for Finalization	18.05.2009 /05.06.2009	NIL
Request for rectification u/s 154	01.10.2009	NIL
P H before AC	05.10.2010	NIL
Non-Speaking order holding the Export Duty is @ Rs.300 PMT	14.08.2014	5 Years
OIA remanding the matter	31.08.2016	7 Years
OIO holding Export Duty @ Rs.300PMT	25.01.2018	9 Years
OIA holding Export Duty @ Rs.50 PMT	20.09.2021	12 years
OIO granting refund	08.04.2022	13 Years
OIO rejecting interest claim	13.02.2023	14 Years
OIA rejecting interest claim	29.05.2023	14 Years

49. As per our discussions in the preceding paragraphs, the appellant has requested for finalization of assessment on 5.6.2009. As per the table given above, there has been a delay at various stages, for which no plausible reason has been given by the Revenue. Let alone giving any reason, in fact Revenue has failed to even address this issue. In terms of the cited decision of Principal Bench, CESTAT Delhi in the case of **Kopertek Metals Pvt. Ltd. Vs Commissioner of CGST**

(West)FINAL ORDER NO's. 59511-59720/2024 dated 25.11.2024 and the High Court's order in the case of **VOS Technologies India Pvt Ltd vs The Principal Addl Director General – Judgement dated 10.12.2024**, read with the cited case laws of **Accurate Chemical Industries and Sterlite Telelink Ltd** discussed supra, applying the ratio, we hold that the Revenue was required to complete the assessment within 6 months as mandated in the Customs Manual – Chapter 7 – para 3.1. Therefore, the assessment should have been completed by 4.12.2010. This would have been easily possible since the PH was already completed on 05.10.2010 and the Written submissions were also submitted on 15.12.2010. Hence, we do not find any reason as to why the finalization was kept pending for a very long period, culminating in the OIA being passed on 29.09.2021. We also note that the Commissioner (Appeals) has finally affirmed the submissions of the appellant and held that the Export Duty is required to be paid @ Rs.50 PMT only and not @ Rs.300 as has been paid at the time of Provisional Assessment.

50. Even after the OIA was passed on 29.09.2021, the refund granting Order in Original was passed only on 8.4.2022, with a delay of 6 months. Thus, it is observed that the excess Export Duty @ Rs.250 PMT has been retained by the Revenue without any explicable reason for a very long time, making the appellant run from pillar to post and to make regular follow up. This has resulted in holding back of substantial amount, putting financial pressure on the appellant. Admittedly, due to this inordinate delay, the appellant would have been compelled to borrow from banks on payment of interest.

51. Therefore, we hold that the Ranbaxy judgement of the Hon'ble Supreme Court would be squarely applicable to the facts of the present case. This is a case where the erroneously excess Export Duty was collected from the appellant during the period 2007-2008. After following up from 2009 onwards for proper rectification of the assessment order and litigation at various forum, finally the refund was granted on 28.07.2022. In terms of Ranbaxy judgement, the appellant would be eligible interest on the refund amount granted to them.

52. It would also be relevant to refer to the Apex Court's judgement in the case of **Sandvik Asia Ltd vs Commissioner Of Income Tax-I, Pune & Ors - Order dated 27 January, 2006**

The Hon'ble Supreme Court framed the following questions :

A. Whether in view of binding decisions of this Court the respondents are estopped from urging that compensation as claimed by the appellant is not payable by them? And therefore whether the Bombay High Court erred in allowing them to urge such a contention in the impugned judgment?

B. Assuming for the sake of argument that there is no provision in the Income-tax Act, 1961 ("the Act") for grant of such compensation, this Court had upheld the view of the Gujarat & Madhya Pradesh High Courts that compensation should be granted (whether called interest or otherwise) and hence the impugned judgment was contrary to a decision of this Court and ought to be reversed?

E. Whether the High Court ought to have held that sections 240 and 244 of the Act refer to 'refund of any amount', which phrase clearly includes any amount (including interest) due by the Income Tax department to the assessee, and hence the appellant was entitled to interest on the delay in the payment of amounts due from the Income-tax department ?

Provisions of Income Tax Act :

243. Interest on delayed refunds.

(1) If the Income-tax Officer does not grant the refund

(a) in any case where the total income of the assessee does not consist solely of income from interest on securities or dividend, within three months from the end of the month in which the total income is determined under this Act, and

(b) in any other case, within three months from the end of the month in which the claim for refund is made under this Chapter, the Central Government shall pay the assessee simple interest at (twelve) per cent per annum on the amount directed to be refunded from the date immediately following the expiry of the period of three months aforesaid to the date of the order granting the refund.

Explanation : If the delay in granting the refund within the period of three months aforesaid is attributable to the assessee, whether wholly or in part, the period of the delay attributable to him shall be excluded from the period for which interest is payable.

244. Interest on refund where no claim is needed. (1) Where a refund is due to the assessee in pursuance of an order referred to in section 240 and the Income-tax Officer does not grant the refund within a period of [three months from the end of the month in which such order is passed], the Central Government shall pay to the assessee simple interest at [twelve] per cent per annum on the amount of refund due from the date immediately following the expiry of the period of [three] months aforesaid to the date on which the refund is granted.

We have given our anxious and thoughtful consideration on the elaborate submissions made by counsel appearing on either side. In our opinion, the High Court has failed to notice that in view of the express provisions of the Act an assessee is entitled to compensation by way of interest on the delay in the payment of amounts lawfully due to the appellant which were withheld wrongly and contrary to the law by the Department for an inordinate long period of up to 17 years.

In our view, there is no question of the delay being 'justifiable' as is argued and in any event if the revenue takes an erroneous view of the law, that cannot mean that the withholding of monies is 'justifiable' or 'not wrongful'. There is no exception to the principle laid down for an allegedly 'justifiable' withholding, and even if there was, 17 (or 12) years delay has not been and cannot in the circumstances be justified.

At the initial stage of any proceedings under the Act any refund will depend on whether any tax has been paid by an assessee in excess of tax actually payable to him and it is for this reason that Section 237 of the Act is phrased in terms of tax paid in excess of amounts properly chargeable. It is, however, of importance to appreciate that section 240 of the Act, which provides for refund by the Revenue on appeal etc., deals with all subsequent stages of proceedings and therefore is phrased in terms of 'any amount' becoming due to an assessee.

The facts and the law referred to in paragraph (supra) would clearly go to show that the appellant was undisputably entitled to interest under Sections 214 and 244 of the Act as held by the various High Courts and also of this Court. In the instant case, the appellant's money had been unjustifiably withheld by the Department for 17 years without any rhyme or reason. The interest was paid only at the instance and the intervention of this Court in Civil Appeal No. 1887 of 1992 dated 30.04.1997. Interest on delayed payment of refund was not paid to the appellant on 27.03.1981 and 30.04.1986 due to the erroneous view that had been taken by the officials of the respondents. Interest on refund was granted to the appellant after a substantial lapse of time and hence it should be entitled to compensation for this period of delay.

It is a case of the appellant as set out above in the instant case for the assessment year 1978-79, it has been deprived of an amount of Rs.40 lakhs for no fault of its own and exclusively because of the admittedly unlawful actions of the Income Tax Department for periods ranging up to 17 years without any compensation whatsoever from the Department. Such actions and consequences, in our opinion, seriously affected the administration of justice and the rule of law.

There cannot be any doubt that the award of interest on the refunded amount is as per the statute provisions of law as it then stood and on the peculiar facts and circumstances of each case. When a specific provision has been made under the statute, such provision has to govern the field. Therefore, the Court has to take all relevant factors into consideration while awarding the rate of interest on the compensation.

This is the fit and proper case in which action should be initiated against all the officers concerned who were all in charge of this case at the appropriate and relevant point of time and because of whose inaction the appellant was made to suffer both financially and mentally, even though the amount was liable to be refunded in the year 1986 and even prior to. A copy of this judgment will be forwarded to the Hon'ble Minister for Finance for his perusal and further appropriate action against the erring

officials on whose lethargic and adamant attitude the Department has to suffer financially.

53. In the present case, as has been observed in the earlier paragraphs, the delay in taking up the issue for finalization of assessment by the Revenue was to the tune of more than 14 years. Hence, we hold that the decision of the Hon'ble Supreme Court in the cited case of *Sandvik Asia* is squarely applicable.

54. Now that we have come to a conclusion that the appellant would be entitled to interest on the refunded amount, the next question to be answered would be as to from what date would they be entitled.

55. At Para 48 above, we have gone into the important landmark dates. It is seen that the appellant has filed their first letter seeking the finalization of assessment on 05.06.2009 for the Export Duty paid during February and March 2008. The PH was conducted on 05.02.2010 and the Written submissions have been made on 15.02.2010. Hence, we hold that within six months from this date, that is by 14.08.2010, the Finalization of assessment should have been completed. After allowing the 3 months from 14.08.2010, the interest would be payable from 14.11.2010. We direct the Revenue to pay the interest from 14.11.2010 till 12.04.2022, the date on which the refund was paid.

56. The next question to be addressed is as to what would be the rate of interest. In the present case, the Export Duty was paid at the time of Exports and the excess Export Duty paid remained with the Revenue till it was refunded. In the OIO, it has been held that the appellant was not required to pay the Export Duty @ Rs.300 PMT and was required to pay the same @ Rs.50 PMT only. Thus the amount retained by the Revenue would be akin to the appellant making the payment during the course of investigation. Hence, we have considered the following case laws :

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39. In this connection reference can also be made to the decisions of the Allahabad High Court in *Pace Marketing Specialities* and *Ebiz.Com Private Limited*, wherein after making reference to the decision of the Supreme Court in *Sandvik Asia Ltd.*, the High Court granted interest at the rate of 12% per annum in matters relating to refund of amount deposited during investigation and adjudication.

40. In *Riba Textiles*, the Tribunal also granted interest at the rate of 12% on refund of amount deposited during investigation and at the time of entertaining the stay application.

41. In view of the aforesaid decisions, and the fact that the rate of interest

varies from 6% to 18% in the aforesaid Notifications issued under Sections 11AA, 11BB, 11DD and 11AB of the Excise Act, the grant of interest @ 12% per annum seems to be appropriate.

42. Thus, for the reason stated above, *Excise Appeal No. 70628 of 2019* is allowed and the order dated 28-5-2019, passed by the Commissioner (Appeals) is modified to the extent that interest shall be granted to the appellant @ 12% instead of @ 6% from the date of deposit till the date of payment. *Excise Appeal No. 70674 of 2019* filed by the Principal Commissioner for setting aside the order dated 28-5-2019, passed by the Commissioner (Appeals) is dismissed.

(62) G.S.T.L. 136 (P & H)

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9. While deciding the issue of interest, Ld. Tribunal has relied upon the law laid down by the Apex Court in *Sandvik Asia Ltd. v. CIT, Pune - 2007 (8) S.T.R. 193* (S.C.) wherein it was held that :-

XXXXX

9. It is not disputed that the provisions of Income-tax Act, 1961 and Central Excise Act, 1944 are *pari materia* and, therefore, law laid down by the Supreme Court in the case of *Sandvik Asia Ltd.* (supra) shall be applicable to the present case.

10. Ld. Counsel for the appellant is not in a position to deny the proposition of law laid down in the case of *Sandvik Asia Ltd.* (supra) and the applicability thereof to the facts of the present case

Churchit Interntional Vs CC (Export)

Customs Appeal No. 51301 of 2023 [SM]

Final Order No.58537/2024 dated 6.9.2024

The Delhi Tribunal has held as under :

The Appellant was made to deposit Rs.50,00,000/- involuntarily under threat of arrest during investigation on 18.03.2014.

Thereafter, Assistant Commissioner of Customs (Refund) vide Order-in-Original No.045/2021 dated 24/12/2021 allowed the refund of Rs. 50,00,000/- but had not granted interest on the said amount.

5. Having heard both the parties and after perusing the record it is worth noting that amount of Rs.50,00,000/- was deposited much before issuance of show cause

notice and adjudication order did not confirm any demand against the appellant and thus the said amount was never appropriated against any demand. There was no demand against the appellant and accordingly such collection of amount was without authority of law.

7. These observations when seen in the light of above quoted decisions, it is clear that Section 11B/11BB of Central Excise Act is not applicable to the given set of circumstances. This Tribunal in the case of M/s. Parle Agro Pvt. Ltd. Vs. Commissioner, GST (supra), wherein following findings have also been endorsed:

“30. In the present case, the provisions of section 11B of the Excise Act would not be applicable. This is for the reason that the appellant was not claiming refund of duty. The applicant, as noticed above, had claimed refund of the revenue deposit. Such a finding has also been clearly recorded by the Tribunal in the order dated 31.01.2017, which order has attained finality.

33. There is no provision in the Excise Act, which deals with refund of revenue deposit and so rate interest has not been prescribed, when revenue deposit is required to be refunded.”

The Tribunal in the said case had allowed the interest at the rate of 12% on the refund amount from the date of deposit till the date of payment thereof.

15. This Tribunal in the case of M/s. Parle Agro Pvt. Ltd. Vs. Commissioner, Central Goods & Service Tax, Noida (vice- Versa) reported as 2021 (5) TMI 870 – CESTAT ALLHABAD has held that in the light of the above discussed notifications the grant of interest at the rate of 12% per annum seems to be appropriate. Tribunal Delhi (CESTAT) also in the case of Duggar Fibre Pvt. Ltd. Vs. Commissioner of C. Ex., Cus. & CGST, Delhi reported as 2021 (378) ELT 293 (Tri.-Del.) wherein the adjudicating authority was ordered to grant interest @ 12% per annum from the date of deposit till the date of refund. The relevant Para is reproduced as under:

“I further take notice that Division Bench of this Tribunal in Parle Agro (P) Ltd. Vs. Commissioner, CGST - 2021-TIOL-306-CESTATALL, wherein interest on pre-deposit (made during investigation) have been enhanced from 6% to 12%, following the ruling of the Apex Court in Sandvik Asia Ltd. Vs. Commissioner – 2006 (196) E.L.T. 257 (S.C.). I further direct the Adjudicating Authority to grant interest @ 12% per annum from the date of deposit till the date of refund. Such interest should be granted within a period of two months from the date of receipt or service of the copy of this order.”

16. Similar view was taken in case of Pr. Commr. of CGST, New Delhi Vs. Emmar Mgf Construction Pvt. Ltd. reported as 2021 (55) GSTL 311 (Tri.-Del.) wherein it was held that amount deposited during investigation and/or pending litigation is ipso facto pre-deposit and interest is payable on such amount to the assessee being successful in appeal, from the date of deposit till the date of refund. Further, it is directed that the adjudicating authority shall disburse the amount of interest @ 12% per annum forthwith.

“8. Considering the rival contentions, this appeal by the Revenue is dismissed. Further, it is directed that the Adjudicating Authority shall disburse the amount of interest @12% per annum forthwith, within a period of 45 days from the date of receipt of the copy of this order, as held by Division Bench of this Tribunal in Parle Agro (P) Ltd., (supra).”

19. Consequent to the entire above discussion, the findings of the order under challenge are upheld with respect to holding appellant entitled for getting refund of the amount along with interest. However, it is held that the appellant is entitled to have interest on the amount of refund sanctioned at the rate of 12% per annum to be calculated from the date of the deposit of the amount till the date refund thereof. Resultantly, the present appeal is hereby allowed.

57. As per the ratio laid down in the above case laws, we hold that the appellant is eligible to get the interest @ 12% per annum from 14.11.2010 till 12.04.2022.

58. To summarize our decision :

- (a) Whether any interest is payable to the appellant for the finalization of assessment in a delayed manner

Considering the factual matrix of the case, clearly indicating the lapse on the part of the Revenue to complete the Finalization within the period of 6 months as mandated, the Revenue cannot take umbrage under Section 18(4) to deny the interest. Since the provisions of Section 27A are attracted, interest is required to be paid. For this we are placing reliance on the Supreme Court decisions in the case of Ranbaxy and Sandvik Asia and other case laws.

- (b) If they are found to be eligible to interest, what would be the relevant date of interest?

In the present case, the Finalization should have been completed by 14.08.2010, i.e within six months from the date of having all the documents submitted in the course of Personal Hearing. This date is taken as the date of filing of the refund claim. After allowing the 3 months from

14.08.2010, the interest would be payable from 14.11.2010.

- (c) If the interest is payable what would be the rate of interest to be paid?

Relying on the Riba, Parle and Churchit case laws discussed, we hold that the interest is payable @ 12 p.a.

59. The appeal is allowed as per the above terms.

(Pronounced in the open court on 07/01/2025)

Sd/-

R. Muralidhar
Member (Judicial)

Sd/-

K. Anpazhakan
Member (Technical)

Pooja