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

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 75339 of 2023

(Arising out of Order-in-Appeal No. 13-26/CUS/CCP/2022 dated 10.03.2023 passed by Commissioner (Appeals), GST, CX & Customs, 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**

With

(1) Customs Appeal No. 75184 of 2025 (M/s. Vedanta Ltd. Vs. Commr. Of Customs (Preventive), Bhubaneswar (2) Customs Appeal No. 75185 of 2025 (M/s. Vedanta Ltd. Vs. Commr. Of Customs (Preventive), Bhubaneswar (3) Customs Appeal No. 75186 of 2025 (M/s. Vedanta Ltd. Vs. Commr. Of Customs (Preventive), Bhubaneswar) (4) Customs Appeal No. 75187 of 2025 (M/s. Vedanta Ltd. Vs. Commr. Of Customs (Preventive), Bhubaneswar (5) Customs Appeal No. 75188 of 2025 (M/s. Vedanta Ltd. Vs. Commr. Of Customs (Preventive), Bhubaneswar (6) Customs Appeal No. 75189 of 2025 (M/s. Vedanta Ltd. Vs. Commr. Of Customs (Preventive), Bhubaneswar (7) Customs Appeal No. 75190 of 2025 (M/s. Vedanta Ltd. Vs. Commr. Of Customs (Preventive), Bhubaneswar (8) Customs Appeal No. 75191 of 2025 (M/s. Vedanta Ltd. Vs. Commr. Of Customs (Preventive), Bhubaneswar) (9) Customs Appeal No. 75192 of 2025 (M/s. Vedanta Ltd. Vs. Commr. Of Customs (Preventive), Bhubaneswar) (10) Customs Appeal No. 75193 of 2025 (M/s. Vedanta Ltd. Vs. Commr. Of Customs (Preventive), Bhubaneswar) (11) Customs Appeal No. 75194 of 2025 (M/s. Vedanta Ltd. Vs. Commr. Of Customs (Preventive), Bhubaneswar) (12) Customs Appeal No. 75195 of 2025 (M/s. Vedanta Ltd. Vs. Commr. Of Customs (Preventive), Bhubaneswar) (13) Customs Appeal No. 75196 of 2025 (M/s. Vedanta Ltd. Vs. Commr. Of Customs (Preventive), Bhubaneswar)

SI No. (1)-(13) (Arising out of Order-in-Appeal No. 13-26/CUS/CCP/2022 dated 10.03.2023 passed by Commissioner of (Appeals), GST, CX & Customs, Bhubaneshwar.)

APPEARANCE :

Mr. Mukesh Laddha, CA for the Appellant

Mr. Subrata Debnath, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE MR. K. ANPAZHAKAN MEMBER (TECHNICAL)

FINAL ORDER NO.75322-75335/2025

Date of Hearing : 04 February 2025
Date of Pronouncement : 04 February 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 19.05.2007 to 14.02.2008, by way of Fourteen 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 separate letters for each of 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. One sample is produced below-

Letter submitted for S/Bill No.-000136 dated-19.05.2007 Vessel- MV Bars

Ak

Ar-2 series

SESA GOA

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506-

SESA GOA LIMITED

Sesa Ghor,
20 EDC Complex, Patto,
Panjim, Goa 403 001
Tel : +91-832 2460600
Grm : SESAGOA

May 18, 2009

To,

The Deputy Commissioner of Customs,
Custom House,
Paradip.

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 No. 000136/IOF/2007-08 dated 19.05.2007, Duty paid Rs. 1,14,00,000/-.

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 Narsinghdas Agarwal Vs U.O.I.

2) 1988 (33) ELT 673 (Bom.) in the case Union of India Vs Gangadhar Narsinghdas 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 form Kolkatta.

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.

OFFICE OF THE
DEPUTY COMMISSIONER
29 MAY 2009
CUSTOM HOUSE
PARADEEP

SESA GOA LIMITED

2 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. Copy of Shipping Bill (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 PRAZERES
ASSOCIATE GENERAL MANAGER-LOGISTICS

Encl. : as above

3. After this stage, it is found that the case had a long history, with no order finalizing the assessment being passed, in spite of Personal Hearing conducted and submissions made thereon 27.01.2010, 05.02.2010 and 15.02.2010. Getting no proper response for the regular follow-ups made with all the authorities, the

Appellant was forced to file Writ Petition No. 12837/2014 on 15.07.2014, seeking the High Court's intervention to pass the Finalization Orders. In the counter-affidavit filed by the Revenue before the High Court, they claimed that the Final Assessments in respect of 14 Shipping Bills were completed in 2007 and 2008 itself. Vide Order No.11 dated 02.01.2023, the High Court ordered the Revenue to provide all the 14 Assessment Orders by 06.02.2023. The Dept provided the Assessment orders in respect of 12 Shipping bills on 06.02.2023 showing that they have finalized the Export Duty @ 300 per MT. In respect of 2 Shipping Bills, the Revenue was not in a position to find the copies of the Assessment orders, but vide their letter dated 01.03.2023 confirmed that even in respect of these Shipping Bills the finalization was done holding that the Export Duty is to be paid @ 300 PMT. Being aggrieved, the appellants filed their Appeal before the Commissioner (Appeals). Vide OIA No.13-26/CUS/CCP/2022 dated 13.03.2023, after finding that the Fe content is less than 62% as per the Test Reports of CRCL as well as per the Test Reports submitted by the appellant and he held that the Export Duty is required to be paid @ Rs.50 PMT. Thereby he allowed the refund of excess Rs.250 PM of Export Duty paid by the appellant. However, he has not considered the claim of the appellant to grant interest on such delayed refund which has been granted after about 14 years from the date of exports. 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:

Sr. No.	Letter Dated	Communication Addressed to / From	Subject / Particular of the Communication	Letter Deposited on
1	19.05.2007-14.02.2008	Customs	Filing of Shipping Bills	19.05.2007-14.02.2008
2	19.05.2007-14.02.2008	Customs	Payment of Export Duty of @300/- per WMT on declared WMT Qty.	19.05.2007-14.02.2008
3	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
4	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	26.10.2009

Sr. No.	Letter Dated	Communication Addressed to / From	Subject / Particular of the Communication	Letter Deposited on
			Supreme Court in the case of Gangadhar Narsinghdas Agarwal in 1997 (89) ELT 19 (SC)	
5	15.12.2009	The Deputy Commissioner of Customs, Custom House, Paradip	Submission made to Dy Comm., Paradip as requested during meeting held on 14.12.2009 with.	15.12.2009
6	27.01.2010	Shri. R.K. Samal, Superintendent, Custom House, Paradip	Personal hearing attended and requested 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
7	05.02.2010	The Deputy Commissioner of Customs, Custom House, Paradip	Personal hearing attended and requested 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
8	15.02.2010	The Deputy Commissioner of Customs, Paradip	Written submissions filed for PH attended	22.02.2010
9	30.03.2010	The Chief Commissioner, Bhubaneshwar	Request for suitable directions for expeditious disposal of above request.	30.03.2010
10	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
11	19.03.2014	The Asst. Commissioner of Customs, Custom House, Paradip	Reminder of Rectification of Assessment / reassessment	25.03.14
12	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
13	01.04.2014	To CPIO	RTI application for supplying Departmental Test reports and outcome of PH on 10.02.10	21.04.14
14	19.04.2014	To Company	RTI Reply – copy of Customs Test Report received for 12 S/Bills	

Sr. No.	Letter Dated	Communication Addressed to / From	Subject / Particular of the Communication	Letter Deposited on
14A	03.07.2014	To Company	RTI Reply – copy of Customs Test Report received for bal 2 S/Bill	
15	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
16	02.06.2014	CP Gramm online grievances	**CBOEC/E/2014/00761** Grievances for no action by Customs Paradeep on our request for non-action by Customs Paradeep on our request of Final / Rectification of Assessment by applying the Hon'ble Supreme Court directions	02.06.14
17	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	...
18	30.06.2014	Reply from Vigilance	Reply to Company's representation that the matter has been forwarded to office of Chief Commissioner	07.07.14
19	15-07-2014	Writ Petition for directing Finalisation / Rectification of prov. Assessment	Writ Petition No. 12837/2014 has been filed before Hon'ble High Court of Orissa for granting justice as per law	15-07-2014
20	08.12.2014	Counter Affidavit by Asst Comm Paradeep	As per Affidavit, the Dept has already finalized the S/Bills in 2007-08 itself, without Honoring Supreme Court direction, even Fe contents, as per CRCL Reports, in all the S/Bills were below 62% in Dry Basis itself	08.12.2014
21	10-08-2021	Interim Order	Interim Order for keeping the matter pending due to similar issue pending before Hon'ble Supreme Court	10-08-2021
22	02-01-2023	Final Order No. 11	Hon'ble High Court of Orissa has issued final order directing Dept to issue Assessment Order and deliver by 06.02.2023	02-01-2023

Sr. No.	Letter Dated	Communication Addressed to / From	Subject / Particular of the Communication	Letter Deposited on
23	05/01/2023	Dy. Comm. Paradeep / Commissioner of Customs, Bhubaneshwar	Request for implementing directions of Hon'ble High Court of Orissa for issuing Assessment Orders of 14 Shipping Bills	05/01/2023
24	06.02.2023	Dy. Comm. Paradeep to Vedanta	Supplied Final Assessment orders of 12 S/Bills, Balance 2 are yet to be delivered	06.02.2023
25	07/02/2023	Commissioner Appeals	Submissions of 12 Appeals against supplied Assessment Orders	07/02/2023
26	10/02/2023	Dy. Comm. Paradeep / Commissioner of Customs, Bhubaneshwar	Reminder to supply Balance two Assessment Orders	10/02/2023
27	01/03/2023	Dy. Comm. Paradeep / Commissioner of Customs, Bhubaneshwar	Receipt of communication that the Balance two S/Bills No. 00266/IOF/07-08 dated 22.06.2007, 000606/IOF/07-08 dated 05.10.2007 were also finalized by levying Expenses Duty @Rs. 300/- Per WMT	
28	17/02/2023	Commissioner Appeals	Submissions of Balance 2 Appeals for non-supply of Bal 2 Assessment Orders	17/02/2023
29	02.03.2023	Commissioner Appeals to Vedanta	PH Notice for all 14 S/Bills	02.03.2023
30	13.03.2023	Commissioner Appeals Allow the Appeals	13-26/CUS/CCP/2022 dated 13.03.2023 issued allowing refund of excess duty collected @Rs. 250/-, rejecting request for interest on delayed refund	
31	14.03.2023	Dy. Commissioner of Customs, Paradeep	Refund claim application filed basis Order in Appeal	
32	18.05.2023	Dy. Commissioner of Customs, Paradeep	Refund claim allowed vide OIO No. EXP /REF /23 /PDP /2023 dated 18.05.2023, through file VIII-CUS-20(10)EXP/REF/PDP/2023 and Refund Cheque for Rs. 13,12,54,750/-is issued	

5. The Ld CA submits that having received no response whatsoever from the Dept. to their letter dated 18.05.2009 [filed on 5.6.2009], to finalize the assessment of all 14 S/Bills 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 aprx 5 months from their initial letter dated 18.05.2009 submitted on 05.06.2009], 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 their follow-up by way of letters addressed to the AC/Commissioner / CPIO while filing RTI application / 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.

6. The Ld CA submits that having received neither positive response nor any reply to the various correspondence detailed above, made to the highest authorities of the Customs Department to finalize the assessments, the appellant was constrained to file Writ Petition No.12837/2014 on 15.07.2014, before the Hon'ble Orissa High Court, seeking the High Court's intervention to pass appropriate orders directing the Revenue to Finalize the Assessment Orders. In the counter-affidavit filed by the Revenue before the Hon'ble High Court, they claimed that the Final Assessments in respect of 14 Shipping Bills were completed in 2007 and 2008 itself. Vide Annexure A – Page 13 of their Counter Affidavit, the Revenue filed the assessment details of 14 Shipping Bills, which is being reproduced below :

13 ANNEXURE- A

DETAILS OF TEST RESULT & FINAL ASSESSMENTS

Shipping Bill No. & Date	Fe content as per Pre-shipment analysis submitted by the exporter	Fe content as per Customs House Laboratory report on Dry basis.	Date of Final Assessment
137/19-05-2007	63.5%	60.7%	25/08/2007
136/19-05-2007	63.5%	55.0%	24/08/2007
266/22-06-2007	63.5%	59.9%	09/10/2007
311/04-07-2007	63.5%	59.4%	28/08/2007
427/07-08-2007	63.5%	60.9%	15/10/2007
474/28-08-2007	63.5%	60.1%	09/04/2007
510/10-09-2007	63.5%	60.1%	11/01/2008
561/25-09-2007	63.5%	60.2%	12/12/2007
606/05-10-2007	63.5%	61.7%	14/01/2008
785/27-11-2007	63.5%	59.3%	07/03/2008
787/28-11-2007	63.5%	61.0%	07/03/2008
849/19-12-2007	63.5%	59.7%	24/03/2008
852/22-12-2007	63.5%	60.0%	07/03/2008
1057/14-02-2008	63.5%	61.0%	Finalised
1121/29-02-2008	63.5%	63.7%	07/07/2014
1233/26-03-2008	63.5%	63.7%	07/07/2014

CERTIFIED TO BE A TRUE COPY
Superintendent (Legal)
Central Excise & Customs
Bhubaneswar

7. Vide Order No.11 dated 02.01.2023, the Hon'ble High Court of Orissa ordered the Revenue to provide the Assessment Orders by 06.02.2023. The Revenue provided 12 Assessment Orders on 06.02.2023 and in respect of Two Shipping Bills – S/Bills No. 00266/IOF/07-08 dated 22.06.2007, 000606/IOF/07-08 dated 05.10.2007, the Revenue on 1.3.2023 sent a letter stating they are not in a position to locate the Assessment orders but confirmed that the finalization was done taking the Export duty payable @ Rs.300 PMT.

8. Being aggrieved by the fact that the Finalization was done taking the Export Duty @ Rs.300 PMT, in spite of all the documentary evidence like Test Reports, Invoices on the overseas party, Bank Realization Statements instead of finalizing the Export Duty @ Rs.50 PMT, the appellants filed their Appeal before the Commissioner (Appeals).

9. The Commissioner (Appeals) vide OIA 13-26/CUS/CCP/2022 dated 13.03.2023, has gone into all the details, verified all the relevant documents and has held as under :

52. All the communications issued vide letter C.No.- VIII-CUS-48(54)Misc/Legal/PDP/2021/1081 dated 06.02.2023, and C.No.- VIII-CUS-48(54)Misc/Legal/PDP/2021/1925 dated 01.03.2023 confirming finalisation of subjected 14 S/Bills, are non-speaking orders and without considering contentions and submissions of the Appellants.

53. It is seen that as per Annexure A at page no 13 of affidavit submitted by Dy. Commissioner of Customs, Paradeep and as per Customs Lab Reports of all the 14 S/Bills submitted alongwith Appeals, Fe contents were below 62%, even in dry conditions.

54. Now, I will see, whether Fe contents on which basis the Final Invoice is issued, and payment received by Appellants from Foreign buyer are also below 62%. This is to observe guidelines as issued in Circular No 12/2014 dated 17.11.2014.

55. For the purpose of quantification of duty, **two** factors to be determined, i.e., firstly, whether the duty has to be levied on **WMT or DMT** and secondly, whether determination of FE content should be determined in **MOIST (WET)** form or **DRY (DMT)** form. The issue is no longer res integra and settled by the Hon'ble Supreme Court in matter of **Union of India Vs Gangadhar Narsingdas Agarwal – 1997 (89) ELT 19 (SC),** wherein it was held that since the export duty is relatable to the weight of the iron content in the ore, in **WET** form, it would be incorrect if the percentage of iron ore content is determined on **DRY** weight, i.e., after ignoring the moisture content at the relevant point of time for charging duty. Hence for the purpose of determination of rate of duty FE content must be determined on NATURAL, WET basis or AS RECEIVED basis.

56. The said issue has been clarified by CBIC vide **Circular No. 04/2012-Cus dated 17.02.2012**, taking into account Hon'ble Supreme Court decision in the case of **UOI Vs Ghangadhar Narsingdas Agarwal,** that for the purpose of charging the export duty, the assessment of iron ore for determining of Fe content 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 the Net FE content.

57. All the 14 Appeals are related to concluding of Fe contents in exported iron ore fines so that applicable export duty on the exported iron ore fines can be determined. For the purpose of levy of Export duty, the Fe content in the exported iron ore fines are to be calculated by including the moisture weight to arrive at natural or **WET** weight.

58. Similar issue was before the Commissioner of Customs, Mangalore, in case of M/s Dream Logistics Co India Pvt Ltd., vide OIO No. 04/2010(Commr) dated 28.04.2010, F.No. C.No. VIII/10/14/2009/Adjn. In the said case, the adjudicating authority, in Para 22, has relied upon opinion dated 22.01.2009 of Central Revenue Control Lab, New Delhi as per which iron content in samples as in received basis can be calculated from Iron content on dry basis if the moisture content in the samples as received basis is known :

$$\text{Iron Content} = \frac{Fe \times (100-M)}{100}$$

Where Fe is %age of Iron content on dry basis
M is the moisture content in the Sample.

The above said OIO No. 4/2010 dated 28.04.2010 has also been accepted by the Committee of Chief Commissioner on dated 16.07.2010 vide File No VIII/48/89/2010 CCU as per letter C. No. VIII/10/14/2009 Cus adjn dated 07.04.2014 of Dy. Commissioner (review), Managalore.

59. The Appellants has submitted Test Certificate issued by the Surveyor/ Assayer – Quality Services and Solutions Pvt. Ltd. at load port and by the Quarantine of the

Republic of China discharge port at discharged Port in China, wherever applicable, based on these reports Fe contents are being tabulated below –

				As per Customs Lab			As per Govt Rcgnsd Assayer @Loadport			As per Test Reports of CIQ @Dischargeport		
S. No.	S/ Bill No	S/ Bill Date	Vessel Name	Fe % Dry Basis	Moisture %	Fe% WET Basis	Fe % Dry Basis	Moisture %	Fe % Wet Basis	Fe % Dry Basis	Moisture %	Fe % Wet Basis
1	000136	19.05.2007	Bars	55.00%	4.00%	52.80%	63.95%	5.45%	60.46%	64.30%	6.28%	60.26%
2	000137	19.05.2007	Long Guan	60.70%	No mention		63.92%	5.45%	60.44%	64.13%	5.98%	60.29%
3	000266	22.06.2007	Shen Nong Feng	59.90%	0.80%	59.42%	63.85%	8.52%	58.41%	63.98%	8.25%	58.70%
4	000311	14.07.2007	Antwerp Ace	59.40%	0.70%	58.98%	63.91%	6.11%	60.01%	63.83%	6.97%	59.38%
5	000427	07.08.2007	Rea	60.90%	0.90%	60.35%	63.94%	7.98%	58.84%	63.79%	9.60%	57.66%
6	000474	28.08.2007	Good Light	60.10%	0.50%	59.80%	63.85%	8.50%	58.42%	63.58%	9.31%	57.66%
7	000510	10.09.2007	C Duckling	60.10%	5.5%	56.79%	63.71%	8.75%	58.14%	63.90%	9.29%	57.96%
8	000561	25.09.2007	Ikan Serong	60.20%	0.40%	59.96%	63.74%	8.75%	58.16%	NA	NA	NA
9	000606	05.10.2007	Alba	61.70%	No mention		63.87%	8.62%	58.36%	63.74%	8.70%	58.19%
10	000785	27.11.2007	Prabhu Jivesh	59.30%	0.20%	58.60%	63.95%	8.36%	58.60%	NA	NA	NA
11	000787	28.11.2007	Five Stars Eternal	61%	3%	59.17%	63.90%	7.95%	58.82%	64.62%	7.60%	59.70%
12	000849	19.12.2007	Good Purpose	59.70%	0.80%	59.22%	63.85%	7.07%	59.34%	NA	NA	NA
13	000852	22.12.2007	Prabhu Daya	60%	0.40%	59.76%	63.85%	7.44%	59.10%	NA	NA	NA
14	001057	14.02.2008	Five Star Pioneer	61%	0.40%	60.76%	63.66%	7.87%	58.65%	NA	NA	NA

60. The Fe contents in WET conditions have been derived with the help of mathematical formula mentioned in para no 57.

61. The final invoices have been issued by the Appellants, based on the certificate of weight and certificate of analysis at the load port or discharging port as per agreed terms and conditioned, mentioned in the agreement with buyer in relevant Clause.

62. It is found that the Appellants has raised the Final Invoice based on Fe contents as Analysis Report at Load port / discharged port, as per terms of agreement. The details of Fe contents of Final Invoices of all 14 S/Bills are as below –

S. No.	S/ Bill No	S/ Bill Date	Vessel Name	Fe % on Dry Basis	Moisture %	Fe% WET Basis
1	000136	19.05.2007	Bars	64.30%	5.87%	60.53%
2	000137	19.05.2007	Long Guan	64.13%	5.72%	60.46%
3	000266	22.06.2007	Shen Nong Feng	63.98%	8.25%	58.70%
4	000311	14.07.2007	Antwerp Ace	63.83%	6.54%	59.66%
5	000427	07.08.2007	Rea	63.79%	8.79%	58.18%
6	000474	28.08.2007	Good Light	63.58%	8.91%	57.92%
7	000510	10.09.2007	C Duckling	63.90%	9.02%	58.14%
8	000561	25.09.2007	Ikan Serong	63.74%	8.75%	58.16%
9	000606	05.10.2007	Alba	63.74%	8.70%	58.19%

S. No.	S/ Bill No	S/ Bill Date	Vessel Name	Fe % on Dry Basis	Moisture %	Fe% WET Basis
10	000785	27.11.2007	Prabhu Jivesh	63.95%	8.36%	58.60%
11	000787	28.11.2007	Five Stars Eternal	63.90%	7.95%	58.82%
12	000849	19.12.2007	Good Purpose	63.85%	7.07%	59.34%
13	000852	22.12.2007	Prabhu Daya	63.85%	7.44%	59.10%
14	001057	14.02.2008	Five Star Pioneer	63.66%	7.87%	58.65%

Accordingly, in all 14 S/Bills, Fe contents, on which basis Final Invoice is issued and payment received, are also below 62% in WET basis. The Appellants has also submitted CA Certificates in this regard certifying the receipt of payments as per above mentioned Fe contents.

63. I have observed that the Fe Contents, Moisture and price declared on the Shipping Bills, Basis of Final Invoice and receipt of payments are as per terms of Sale Agreement with buyer. I also have observed that the Appellants has received the Final Payments as per Test reports either issued by Quality Services and Solutions Pvt. Ltd., at Load port, which is a reputed laboratory and recognised by Government or Entry-Exit Inspection and Quarantine of the People's Republic of China issued by CIQ at destination Port, the Appellants have submitted the BRC and CA Certificates from an Independent Chartered Accountant confirming the same. In all cases Fe contents on Wet basis are below 62%.

64. 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.

65. 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 results of Load Port or Discharge Port, as per agreed terms mentioned in contract. In such case it justified to accept and conclude that Fe contents in exported Iron Ore Fines under all subjected 14 S/Bills, for which 14 Appeals have been filed, were below 62%, in WET Condition, in all the situations and documents, like S/Bills (provisional Fe Contents), Customs Final Test Report, Final Test Report issued by Govt. recognised assayer at

Load Port, discharge port Test Report, Final Invoice and CA Certificates issued by an Independent Chartered Accountant.

It has been observed that in Appellants own case, already CESTAT Bangalore and CESTAT Kolkata have either concluded the eligibilities of getting concessional rate export duty @Rs. 50/- PMT basis Hon'ble Supreme Court order and Department has allowed refunds, the same are as below-

65.1 Hon'ble CESTAT Bangalore, vide its **FINAL ORDER NO. A/20030 / 2022 dated 14.02.2022,** accepted the Appeal……

65.2 Similarly, recently, **Hon'ble CESTAT, Kolkata** also on 26.07.2022 vide it's **FINAL ORDER NO. No. 75404/2022 dated 28.07.2022, accept the Appeal and set aside** the Commissioner Appeals Order

67. The Department is required to follow the judicial discipline as settled by Hon'ble Supreme Court, CESTAT, Commissioner Appeals and directions given in Circular No. 04/2012.

68. As per the exemption Notification No. 62/2007-Cus dated 03.05.07, the applicable rate of export duty would be Rs. 50/- PMT, if the FE content is less than 62%.

As the Fe contents in Iron Ore Fines, in moist / wet condition exported, under all the 14 S/Bills, in all the situations and documents, were below 62%, like S/Bills, Customs Final Test Report, Final Test Report issued by Govt. recognised assayer, discharge port Test Report, Final Invoice and CA Certificates issued by an Independent Chartered Accountant.

In such case, I am convinced that the applicable rate of export duty would be Rs. 50/- PMT and the Appellants is eligible to get benefit of concessional export duty rate @Rs. 50/ PMT as prescribed in Notification No 62/2007-Cus dated 03.05.2007.

As the Appellants has already been paid Rs. 300/- PMT, he is eligible to get refund of Rs. 250/- PMT.

69. Regarding Appellant's claim for interest, basis delay and no action on their requests. It is seen that the Appellants were continuously following with office of Dy. Commissioner, Paradeep Customs for finalisations as well as rectification basis Hon'ble Supreme Court. As per Customs Final Test reports, Fe contents of all the S/Bills were below 62%, accordingly a reasoned speaking order should have been issued for denial of concessional rate of export duty. Non-following the decision of Hon'ble Supreme Court or applying the incorrect rate of Duty is a reason of rectification under the Section 154, the same has confirmed by Hon'ble CESTAT Bangalore in the Appellants own case.

70. Although, 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. As in all 14 S/Bills there is no such order exist till now, interest under Section 18(4) cannot be allowed in account of delay in Final Assessment.

10. 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 kept the matters pending for many years even after holding Personal Hearings on 05.02.2010 and 15.02.2010. Before the Hon'ble High Court the Revenue vide their Counter Affidavit claimed that the Assessments were finalized in 2007 – 2008 itself and also showed the details of the CRCL's Test Report pertaining to the 14 Shipping Bills. This portion of the affidavit has already been reproduced above. Since the Assessment was claimed to have been finalized in 2007-2008, as to why this was not brought to the notice of the appellant when they were granted the Personal Hearings in 2010 is not known. Even under the affidavit, while the Revenue claims that they have communicated the same to the appellant, they have neither provided any documentary evidence about the date of despatch of these Assessment orders, nor any date of serving of these Orders on the appellant. Only after the direction of the Orissa High Court, all the Assessment Orders in respect of 12 Shipping Bills were provided and in respect of 2 Shipping Bills, even the Dept. does not have the same. The Commissioner (Appeals) vide the impugned OIA has clearly held that the Assessment Orders are non-speaking orders. Finally, it was the Commissioner (Appeals), who had analyzed, in detail, 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.

11. In the present case, the Assessment Orders finalized by the Revenue in 2007 and 2008 have been taken up, on appeal, by the Commissioner (Appeals). He has finalized the same holding that the Fe content is less than 62% and hence the Export Duty payable would be @ Rs.50 PMT and accordingly has passed the order to grant the refund of the balance Rs.250 PMT. It is submitted that on the date of finalizing the Assessments, the Dept. had all the Test Reports showing the result of Fe content to be less than 62 %. Therefore, the officer finalizing the Assessment Orders was duty bound to consider the CRCL's Test Report while finalizing the assessment. Since the CRCL's Test Reports themselves confirmed that the Fe Contents in all the 14 S/Bills were less than 62%, he could not have adopted the Export Duty of Rs.300 PMT, when the statutory provisions required him to adopt Export Duty of Rs.50 PMT. These erroneous Assessment Orders ignoring the CRCL's Report, cannot be used by the Revenue to deny the interest claim of the appellant for all these years. Had he adopted Rs.50 PMT as Export Duty in 2007 – 08, the appellant would have received the refund of the balance Rs.250 PMT immediately. Secondly, nowhere has the Revenue brought in any evidence to the effect that the Assessment orders were communicated to the appellant. They were given, in February 2023, that too on account of the Hon'ble High Court's direction. All these facts would make it clear the appellant has been made to suffer for more than 14 years due to the erroneous and deliberate actions of the Dept. Hence, it is prayed that the interest may be paid for the intervening period of delay.

12. The Ld. Chartered Accountant also draws our attention to the fact that recently, in their own case, in respect of two Shipping Bills No.1121 dated 29.02.2008 and 1233 dated 26.03.2008, which were also Originally part of the Writ Petition No. 12837/2014 and are at Sl No.15 and 16 of the Annexure A to the Affidavit filed by the Revenue before the High Court, the issue was before this Bench. Vide **Final Order No. 75019/2025 dated 07.01.2025,** this Bench had held as under:

> 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 :
>
> **2022 (380) E.L.T. 219 (Tri. - All.)**
> **PARLE AGRO PVT. LTD. Vs COMMISSIONER, CGST, NOIDA**
>
> **(62) G.S.T.L. 136 (P & H)**
> **COMMISSIONER OF CENTRAL EXCISE, PANCHKULA**
> **Vs RIBA TEXTILES LTD.**
>
> **Churchit Interntional Vs CC (Export)**
> **Customs Appeal No. 51301 of 2023 [SM]**
> **Final Order No.58537/2024 dated 6.9.2024**

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.

(d) Since the issue has been lingering for more than a decade, we direct that the interest should be paid within 8 weeks from the date of communication of this order.

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

13. In view of the above submissions, relying on the above Final Order in their own case, he prays the present Appeals may be allowed holding that the interest @ 12%

per annum may please be held as payable from date of finalization of the assessment as claimed by the Revenue, i.e. in 2007-2008, which was erroneously / deliberately finalized with Export Duty of Rs.300 PMT as against Rs.50 PMT since the CRCL's Report available with the Revenue clearly showed on its own that the Fe content was less than 62 %

14. The Ld AR appearing on behalf of the Revenue, does not deny that the facts are almost similar to the Appeal decided by this Bench in the case of present Appellant in respect of 2 Shipping Bills. However, he points out to the following issues which were not the issues in that case :

(a) As per the Dept's contention, the assessment was finalized in 2007-08 and was not challenged by the appellant if they were not satisfied with the Export Duty of Rs.300 PMT taken therein.

(b) The Commissioner (Appeals) has held that the Export Duty is to be levied @ Rs.50 PMT. After this, the Adjudicating authority has worked out the refund and granted the same to the appellant.

(c) 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.

(d) The appellant has filed their refund claim on 14.03.2023 after the OIA dated 13.03.2023 was passed. The refund was granted on 18.05.2023, that is within a period of 3 months from the date of receipt of the refund claim.

(e) Therefore, he justifies the denial of the interest on the amount refunded to the appellant.

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

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

17. 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 assessment correctly would result 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?

18. As has already been agreed to by both the sides, the above issues were decided in a considerable detail by this Bench vide **Final Order No. 75019/2025 dated 07.01.2025**.

19. The only difference in the present case, is the fact that the Revenue has been claiming that they have finalized the Assessments in 2007 – 08. They have filed Affidavit to this effect before the Hon'ble Orissa High Court to this effect, which is already reproduced in the earlier paragraphs. On going through this Table, we find that the CRCL's Report was available with the Revenue before the date on which the Assessment was finalized. We also find that the Test Reports of CRCL clearly state that the Fe Content in all the 14 Shipping Bills are less than 62%. The following Table clarifies the issue:

S. No.	Shipping Bill No. & Date	Fe content as per Pre-shipment analysis submitted by the exporter	Fe content as per Customs House Laboratory report on Dry basis	Date of Final Assessment	CRCL Report Date
1	137/19-05-2007	63.50%	60.70%	25-08-2007	12-07-2007
2	136/19-05-2007	63.50%	55.00%	24-08-2007	18-06-2007
3	266/22-06-2007	63.50%	59.90%	09-10-2007	26-07-2007
4	311/04-07-2007	63.50%	59.40%	28-08-2007	13-08-2007
5	427/07-08-2007	63.50%	60.90%	15-10-2007	30-08-2007
6	474/28-08-2007	63.50%	60.10%	09-04-2007	09-10-2007
7	510/10-09-2007	63.50%	60.10%	11-01-2008	15-10-2007
8	561/25-09-2007	63.50%	60.20%	12-12-2007	25-09-2007
9	606/05-10-2007	63.50%	61.70%	14-01-2008	12-10-2007

10	785/27-11-2007	63.50%	59.30%	07-03-2008	30-01-2008
11	787/28-11-2007	63.50%	61.00%	07-03-2008	13-02-2008
12	849/19-12-2007	63.50%	59.70%	24-03-2008	15-02-2008
13	852/22-12-2007	63.50%	60.00%	07-03-2008	07-02-2008
14	1057/14-02-2008	63.50%	61.00%	09-04-2008	05-03-2008

20. While the Test Report of the CRCL is part of the affidavit, we have also gone through the above CRCL's Test Reports. They are reproduced below for the convenience of reference:

(1) S/Bill No.-000137 dated-19.05.2007 Vessel- MV Long Guan, Fe Contents- 60.7%

Test Memo No. 078/07-08 dt. 19.05.2007
Vessel Name – MV LONGGUAN

The sample is in the form of brown coloured irregular lumps with powdery material. It is essentially composed of oxides of iron together with associated other matter i.e. siliceous matter. Iron content is 60.7% by wt which is equivalent to 86.8%. Laboratory No. 1646/26-E 1301 dt. 12.7.07

(2) S/Bill No.-000136 dated-19.05.2007 Vessel- MV Bars, Fe Contents- 55%

Test Memo No. 077/07-08 dt. 19.05.2007
Vessel Name – MV BARS

The sample is in the form of reddish brown coloured irregular lumps & powdery material. It is essentially composed of oxides of iron together with associated other siliceous matter. Iron content 55.0% which is equivalent to 78.57. Laboratory No. 1652/26-E-4 dt. 18/6/7

(3) S/Bill No.-000266 dated-22.06.2007 Vessel-MV Shen Nong Feng, Fe Content-59.9%

Test Memo No. 138/07-08 dt. 22. 06. 2007

Vessel Name - MV SHEN NONG FENG

The sample is in the form of Reddish brown coloured irregular lumps and powdery material. It is essentially composed of Oxide of Iron together with associated other metallic oxides and silicious matter. Iron content is 59.9%..by wt (on dry basis) which is equivalent to 85.6%..by wt. Of combined Iron evaluated as Ferric Oxide (Fe2O3). Moisture content is..0.8..%

Lab No - 1998/266-223 dt 26.07.07

(4) S/Bill No.-000311 dated-14.07.2007 Vessel- MV Antwerp Ace, Fe Contents-59.4%

Test Memo No, 154/07-08 dt. 04.07. 2007

Vessel Name - MV ANTWERPACE

The sample is in the form of .brown...coloured irregular lumps and powdery material. It is essentially composed of Oxide of Iron together with associated other metallic oxides and silicious matter, Iron content is 59.4%..by wt (on dry basis) which is equivalent to 84.9%..by wt. Of combined Iron evaluated as Ferric Oxide (Fe2O3). Moisture content is 0.7%.by wt. Lab No -2348/26-E-291 dt. 13.8.07

(5) S/Bill No.-000427 dated-07.08.2007 Vessel- MV Rea, Fe Contents- 60.9%

Test Memo No. 212/07-08 dt. 07.08. 2007

Vessel Name - MV REA

The sample is in the form of ..brown....coloured irregular lumps and powdery material. It is essentially composed of Oxide of Iron together with associated other metallic oxides and silicious matter. Iron content is 60.9%..by wt (on dry basis) which is equivalent to 87.1%..by wt. Of combined Iron evaluated as Ferric Oxide (Fe2O3). Moisture content is.0.5%..by wt.

Lab No-2703/26E-354 dt.30.8.07

(6) S/Bill No.-000474 dated-28.08.2007 Vessel- MV Good light, Fe Contents- 60.1%

Test Memo No. 248/07-08 dt. 28.08.2007
Vessel Name - MV GOOD LIGHT

The sample in the form of ← brown coloured mixture of small lumps and powder. It is essentially composed of Oxide of Iron together with associated other metallic oxides and Siliceous matter. Total Iron content is 60.1% by.wt. (on dry basis) and Moisture content is 0.5% by wt. It has the characteristic of Iron ore concentrate. Its source/ origin may be verified. 3410/26E-529 dt. 09.10.07

(7)S/Bill No.-000510 dated-10.09.2007 Vessel- MV C Duckling, Fe Contents- 60.1%

Test Memo No. 273/07-08 dt. 10.09.2007
Vessel Name - MV C DUCKLING

The sample is in the form of brown coloured irregular lumps and powdery material. It is essentially composed of Oxide of Iron together with associated other metallic oxides and silicious matter. Iron content is 60.1% by wt (on dry basis) which is equivalent to 85.8% by wt. Of combined Iron evaluated as Ferric Oxide (Fe2O3). Moisture content is 5.5% by wt.
LAB NO 3257/26E-505 dt 5-10-07

(8)S/Bill No.-000561 dated-25.09.2007 Vessel- MV Ikan Serong, Fe Contents- 60.2%

Test Memo No. 303/07-08 dt. 25.09.2007
Vessel Name - MV IKAN SERONG

The sample in the form of R brown coloured mixture of small lumps and powder. It is essentially composed of Oxide of Iron together with associated other metallic oxides and Siliceous matter. Total Iron content is 60.2 by.wt. (on dry basis) and Moisture content is 6.4 by wt. It has the characteristic of Iron ore concentrate. Its source/ origin may be verified. 3506/26E-562 dt 25.9.07

(9)S/Bill No.-000606 dated-05.10.2007 Vessel- MV Alba, Fe Contents- 61.7%

Test Memo No. 318/07-08 dt. 05.10.2007

Vessel Name - MV ALBA

The sample is in the form of R.B.......coloured irregular lumps and powde material. It is essentially composed of Oxide of Iron together with associated other metal oxides and silicious matter, Iron content is 61.71 by wt (on dry basis) which is equivale to 0.971...by wt. Of combined Iron evaluated as Ferric Oxide (Fe2O3). Moisture conte is..........by wt. LAB. NO 3643/RE-589, dt 23/10/07

(10) S/Bill No.-000785 dated-27.11.2007 Vessel- MV Prabhu Jivesh, Fe Contents- 59.3%

OMS – 149 (REVISED) 2E/26E. C.B.R.CUSTOMS

Paradip Port Office,
Registration No.
Date :

IR NO...5498
DATE...28/11/07

2EB-109

...hief Chemist,
...aboratory,
...ouse,
...TA – I

Kalarco – 5123/2EF-548, 22/1/08

TEST MEMO

No: 428 / 07-08
Date: 27.11.2007

...e following samples are forwarded for favour of analysis as to :
1. Whether Iron Ore Fines :
2. Percentage of Fe Content:
3. Percentage of Moisture Content:

CUSTOM HOUSE, PARADIP ....Superintendent
DATED............................ DY.COMMISSIONER OF CUSTOMS, Paradip.

PARTICULARS OF IMPORT / EXPORT

Name of the Importer / Exporter and address : SESA COA LIMITED, SESA GHOR, 20-EDC Complex PANAJI, GOA, 403 001.

Name and address of clearing agents : J.M.BAXI & CO., 48, Thakur Lane, Paradip.

Name of the vessel IGM / EGM Rot No. & Line No. : MV. PRABHU JIVESH EXP/531/2007 DT. 15.11.2007

Shipping Bill No. : 000785/IOF/07-08 DT. 27.11.2007

Marks and number of the consignment. : NIL / IN BULK

SESA GOA LIMITED

Country of Origin : ORISSA, INDIA

NUMBER OF SAMPLES	DESCRIPTION OF THE GOODS INCLUDING BRAND NAMES	RESULT OF THE TEST
01	IRON ORE FINES IN BULK	

Analysed and returned to the Asst. Commissioner on ....
.... and the results are shown above.

LABORATORY
DATED .... CHEMICAL EXAMINER / DY. CHIEF CHEMIST

...ORT :

The sample is in the form of ....dark brown.... coloured mixture of small lumps and powder. It is essentially composed of Oxide of Iron together with associated other metallic oxides and Siliceous matter. Total Iron content ...59.3%... by wt. (on dry basis) and Moisture content is ...8.2%... by wt. It has the characteristic of Iron ore concentrate. Its source/ origin may be verified.

...TE :

Particle size of the sample is within 10 mm, which conforms to the ...nes' as defined in IS 1405-1982.

7.2.08
A.C.E.

07/02/08
C.E.

(11) S/Bill No.-000787 dated-28.11.2007 Vessel- MV Five Star Eternal, Fe Contents- 61%

B.R. CUSTOMS
REVISED)

IR NO. 5
DATE 3.12.07

To: Deputy Chief Chemist,
Chemical Laboratory,
Custom House,
CALCUTTA – 1

Kalata – 4976/265
19/1/08

TEST MEMO

No: 480 / 07-08
Date: 28.11.2007

The following samples forwarded for favour of analysis as to :
1. Whether Iron Ore Fi...
2. Percentage of Fe Conte...
3. Percentage of Moisture Co...

CUSTOM HOUSE, PARADIP
DATED..............................

28/11/07
Superintendent
Customs, Paradeep.
DY.COMMISSIONER OF CUSTOMS

PARTICULARS OF IMPORT / EXPORT

Name of the Importer/Exporter and address :	SESA GOA LIMITED, SESA GHOR, 20-EDC Complex, Patto PANJIM, GOA, 403 001.
Name and address of clearing agents	: J.M.BAXI & CO., 48, Thakur Lane, Paradip
Name of the vessel IGM / EGM Rot No. & Line No.	: MV. FIVE STARS ETERNAL EXP/546/2007 DT.26.11.2007
Shipping Bill No.	: 000 787 /IOF/07-08 DT. 28.11.2007
Marks and number of the consignment.	: NIL / IN BULK
Country of Origin	: ORISSA, INDIA

SESA GOA LIMITED

NUMBER OF SAMPLES	DESCRIPTION OF THE GOODS INCLUDING BRAND NAMES	RESULT OF THE TEST
	IRON ORE FINES IN BULK	

... and returned to the Asst. Commissioner on ....
.... and the results are shown above.

CHEMICAL EXAMINER

Total Duty/Cess Amount in ...

The sample is in the form of .... mixture of small lumps and powder. It is essentially composed of Oxide of Iron together with associated other metallic oxides and Siliceous matter. Total Iron content is ....61.0%.. by wt. (on dry basis) and Moisture content is ....3.0%........ by wt. It has the characteristic of Iron ore concentrate. Its source/ origin may be verified.

Sealed remnant returned.

NOTE :

Particle size of the sample is within 10 mm, which conforms to the 'Fines' as defined in IS 1405-1982.

C.A. A.C.E. 13/02/08. C.E. 13/02/08

CHEMICAL LABORATORY

(12) S/Bill No.-000849 dated-19.12.2007 Vessel- MV Good Purpose, Fe Contents- 59.7%

Test Memo No. 460/07-08 dt. 19.12.2007
Vessel Name - GOOD PURPOSE

The sample in the form of brown coloured mixture of small lumps and powder. It is essentially composed of Oxide of Iron together with associated other metallic oxides and Siliceous matter. Total Iron content is 59.7% by wt. (on dry basis) and Moisture content is 0.8% by wt. It has the characteristic of Iron ore concentrate. Its source/ origin may be verified. LAB NO - 5280/26 E-877 dt. 30.1.08

(13) S/Bill No.-000852 dated-22.12.2007 Vessel- MV Prabhu Daya, Fe Contents- 60%

2E/26E

99

B.R. CUSTOMS – 149 (REVISED)
EVISED)

C.B.R.CUSTOMS

Paradip Port Office,
Registration No.
Date :

R NO. 5967
DATE 29.12.07

The Deputy Chief Chemist,
Chemical Laboratory,
Custom House,
CALCUTTA – 1

5292/26E-880
30/1/08

TEST MEMO

No: 461 07-08
Date: 22.12.2007

The following samples are forwarded for favour of analysis as to :

1. **Whether Iron Ore Fines :**
2. **Percentage of Fe Content:**
3. **Percentage if Moisture Content:**

22/12

CUSTOM HOUSE, PARADIP

DATED…………………………

…………………… Superintendent
DY.COMMISSIONER OF CUSTOMS Customs, Paradeep.

PARTICULARS OF IMPORT / EXPORT

Name of the importer / Exporter and address : **SESA GOA LIMITED, SESA GHOR, 20-EDC Complex PATTO, PANJIM, GOA, 403001-INDIA.**

Name and address of clearing agents : J.M.BAXI & CO., 48, Thakur Lane, Paradip

Name of the vessel IGM / EGM Rot No. & Line No. : **MV. PRABHU DAYA**
EXP/580/2007 DT. 17.12.007

Shipping Bill No. : 000852 /IOF/07-08 DT. 22.12.2007

Marks and number of the consignment. : NIL / IN BULK

SESA GOA LIMITED

Country of Origin : ORISSA, INDIA

NUMBER OF SAMPLES	DESCRIPTION OF THE GOODS INCLUDING BRAND NAMES	RESULT OF THE TEST
01	IRON ORE FINES IN BULK	

Analysed and returned to the Asst. Commissioner on ……………………………………
…………………………………… and the results are shown above.

LABORATORY
DATED………………………

CHEMICAL EXAMINER / DY. CHIEF CHEMIST

37

T.M. NO. 461/02-08 LAB. NO. 5242/26E-

REPORT :

The sample is in the form of dark brown coloured mixture of small lumps and powder. It is essentially composed of Oxide of Iron together with associated other metallic oxides and Siliceous matter. Total Iron content is 60.0% by wt. (on dry basis) and Moisture content is 0.4% by wt. It has the characteristic of Iron ore concentrate. Its source/ origin may be verified.

NOTE :

Particle size of the sample is within 10 mm, which conforms to the 'Fines' as defined in IS 1405-1982.

C.A. A.C.E. 15.2.08 C.E. 15/2/08

(14) S/Bill No.-001057 dated-14.02.2008 Vessel- MV Five star Pioneer

Test Memo No. 585/07-08 dt. 14.02.2008
Vessel Name - MV FIVE STARS PIONEER

The sample in the form of — brown coloured mixture of small lumps and powder. It is essentially composed of Oxide of Iron together with associated other metallic oxides and Siliceous matter. Total Iron content is 61% by wt (on dry basis) and Moisture content is 04% by wt. It has the characteristic of Iron ore concentrate. Its source origin may be verified. Lab No - 6003/26E-1056 dt. 05.3.08

21. With all the Test Reports giving the result of Fe Content as less than 62%, we fail to understand as to how the Finalizing Authority, still finalized the Export Duty @ Rs.300 PMT, whereas the statutory provisions provided for the Export Duty @ Rs.50 PMT, if the Fe percentage was less than 62%. On what grounds can the Assessment order be justified, which is required to be finalized solely based on the test result of Fe content. First of all, these Test Reports were available way back in

2007 – 2008 as is being claimed by the Revenue themselves. Secondly, even after continuous follow up from the appellant as can be seen from the chronological Sequence of Events given in the earlier paragraphs, as to why even while the Personal Hearings were being conducted, the appellant was not made aware that the Finalization was already done, is not known. After the Personal Hearing, for the next 4 years there was no action taken by the Revenue. The matter had to be taken up before the Hon'ble High Court of Orissa by the appellant and after about 8 years, the High Court directed the Revenue to provide all the Assessment Orders. Finally, it has taken the Commissioner (Appeals) to go through all the documents like export invoices, Test Reports at Load Port, Discharge Port, CRCL's Report, Bank Realization statement etc., to come to a conclusion that Export duty was payable @ Rs.50 PMT and not at Rs.300 PMT. We do not subscribe to the view that this was the Order based on which the refund was to be given. The Assessing Officer in 2007 – 2008 was duty bound to follow the statutory provisions to apply Rs.50 PMT as the Export Duty based on the CRCL Test Reports confirming that in all the 14 cases the Fe contents was less than 62%. For his action / non-action to do so, the appellant cannot be made to suffer the interest loss during the intervening years.

22. In the cited Final Order No. 75019/2025 dated 07.01.2025 by this Bench, we have already held that non-finalization of the Assessment on timely basis would prove costly to the Revenue, since they will have to pay the interest for the delay from their side. In the present case, the only difference is that in the present case, the Finalization was done in 2007 – 2008, holding that Export Duty @ Rs.300 PMT is payable, in spite of having all the documentary evidence to the effect that the Fe content was less than 62%. While the Commissioner (Appeals) has applied various other paramaters to come to the same conclusion, in the first place, there was no need for the Revenue to take a circuitous route to come to this conclusion. Further even the documents examined by the Commissioner (Appeals), were very much available with the Revenue by 05.06.2009. But the deliberate erroneous action of the Assessing Officer finalizing the assessment has resulted in this massive delay, for which such persons should be made accountable. Therefore, we hold that the respective Assessment dates, on the dates which erroneous Final assessments were made with no plausible reason to do so, are the dates of assessment and the refund accrues to the appellant from that date.

23. As a result, we hold that the interest would be payable to the appellant as per the following Table :

S. No.	Shipping Bill No. & Date	Vessel Name	Fe content as per Pre-shipment analysis submitted by the exporter	Fe content as per Customs House Laboratory report on Dry basis	Date of Final Assessment	CRCL Report Date	Refund of Rs.250 PMT accrues From
A	B	C	D	E	F	G	H
1	137/ 19.05.07	Long Guan	63.50%	60.70%	25.08.2007	12.07.2007	3 Month from the date given at Col F
2	136/ 19.05.07	Bars	63.50%	55.00%	24.08.2007	18.06.2007	3 Month from the date given at Col F
3	266/ 22.06.07	Shen Nong Feng	63.50%	59.90%	09.10.2007	26.07.2007	3 Month from the date given at Col F
4	311/ 04.07.07	Antwerp Ace	63.50%	59.40%	28.08.2007	13.08.2007	3 Month from the date given at Col F
5	427/ 07.08.07	Rea	63.50%	60.90%	15.10.2007	30.08.2007	3 Month from the date given at Col F
6	474/ 28.08.07	Good Light	63.50%	60.10%	09.04.2007	09.10.2007	3 Month from the date given at Col F
7	510/ 10.09.07	C Duckling	63.50%	60.10%	11.01.2008	15.10.2007	3 Month from the date given at Col F
8	561/ 25.09.07	Ikan Serong	63.50%	60.20%	12.12.2007	25.09.2007	3 Month from the date given at Col F
9	606/ 05.10.07	Alba	63.50%	61.70%	14.01.2008	12.10.2007	3 Month from the date given at Col F
10	785/ 27.11.07	Prabhu Jivesh	63.50%	59.30%	07.03.2008	30.01.2008	3 Month from the date given at Col F
11	787/ 28.11.07	Five Stars Eternal	63.50%	61.00%	07.03.2008	13.02.2008	3 Month from the date given at Col F

S. No.	Shipping Bill No. & Date	Vessel Name	Fe content as per Pre-shipment analysis submitted by the exporter	Fe content as per Customs House Laboratory report on Dry basis	Date of Final Assessment	CRCL Report Date	Refund of Rs.250 PMT accrues From
A	B	C	D	E	F	G	H
12	849/ 19.12.07	Good Purpose	63.50%	59.70%	24.03.2008	15.02.2008	3 Month from the date given at Col F
13	852/ 22.12.07	Prabhu Daya	63.50%	60.00%	07.03.2008	07.02.2008	3 Month from the date given at Col F
14	1057/ 14.02.08	Five Star Pioneer	63.50%	61.00%	Finalised	05.03.2008	3 Month from the date given at Col F

24. Other details like the refund granting authority applying Section 27 of the Customs Act 1962, non-consideration of granting of interest are identical to the facts of the case in respect of the **Final Order No. 75019/2025 dated 07.01.2025** passed by us. The conclusions arrived are as per the reproduced at Para 12 above.

25. Accordingly, we hold that, we hold that the appellant is eligible to get the interest @ 12% per annum as per the Column 'H' of the above Table.

26. 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, they clearly indicate the grave lapse on the part of the Revenue to Finalize the assessment holding the Export Duty to be @ Rs.300 PMT without properly considering the CRCL's Reports available on the date of finalization. As per the CRCL's reports, the export duty, for all the 14 S/Bills, should have been finalised @Rs. 50 PMT only. 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 done holding the Export Duty to be @ Rs.50 PMT on the Dates given at Column F in the Table given at Para 23. This date is taken as the date of filing of the refund claim. After allowing the 3 months from these dates, the interest would be payable from the dates coming up as per Column 'H' of this Table.

(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 in our Final Order No. 75019/2025 dated 07.01.2025, we hold that the interest is payable @ 12 p.a.

(d) Since the issue has been lingering for more than a decade, we direct that the interest should be paid within 8 weeks from the date of communication of this order.

27. The Appeals are allowed as per the above terms.
(Operative part of the order was pronounced in the open court.)

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

Sd/-
(K. Anpazhakan)
Member (Technical)

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