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

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 76004 of 2018

(Arising out of Order-in-Appeal No. 60/CUS/CCP-GST/2017 dated 22.12.2017 passed by the Commissioner (Appeals) GST, CX & Customs Central Revenue Building, Rajaswa vihar, Bhubaneswar- 07)

M/s. Jindal Steel & Power Limited **: Appellant**
TRB Iron Ore Mines,
District Sundergarh, Orissa

VERSUS

Commissioner (Appeals), GST, CX & Customs, Bhubaneswar **: Respondent**
Central Revenue Building,
Rajaswa vihar, Bhubaneswar- 07

APPEARANCE:

Shri Deepro Sen, Advocate
MS. Udita Saraf, Advocate for the Appellant

Shri S. Debnath, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.75550/2025

DATE OF HEARING / DECISION: 19.02.2025

Order: [PER SHRI R. MURALIDHAR]

The appellants have exported iron ore fines, declaring therein that it contains moisture of 8%. Accordingly, the value was adopted at the time of exports and the export duty was paid on this assessable value. Subsequently, it was found that the moisture content was only 7.1%. Because of this, the appellant has realized higher value from the overseas importer. This has resulted in a short payment of export duty to the extent of Rs.34,66,009/-.

2. A show-cause notice was issued on 08-10-2013, seeking to know as to why the differential export duty should not be demanded and as to why the goods should not be confiscated. The appellant paid the entire duty of Rs.34,66,009/-, along with the interest of Rs.15,51,039/-, and sent a letter to the officials to drop the penalty and confiscation proposals.

3. The adjudicating authority confirmed the demand, appropriated the amounts already paid and imposed a penalty of Rs.34,66,009/- and also confiscated the goods, giving an option to pay Rs. 5 crores as a redemption fine.

4. Being aggrieved, the appellants had filed their appeal before the Commissioner (Appeals), who has affirmed the order passed by the Adjudicating Authority.

5. Being aggrieved, the appellant is before the Tribunal.

6. The Learned Counsel appearing on behalf of the appellant submits that the actual moisture content was found to be less than what was declared, resulting in higher realization of consideration from the overseas importers. Immediately, after issue of show-cause notice, they have already paid Rs.34,66,009/- along with interest of Rs.15,51,039/-.

7. He further submits that the Ld. Joint Commissioner, in the Order-in-Original dated 31-03-2016, has not given any option to the appellant to pay the penalty at the rate of 25% if the same is paid within 30 days. However, even without having received this option, the appellant has paid 25 % of

Rs.34,66,009/- as penalty on 29-06-2016 amounting to Rs.8,66,502/-, before the appeal was filed before the Commissioner Appeals.

8. He relies on the case law of ***CCE & Cus., Surat-I v Harish Shell Mills [2010 (255) E.L.T. 393 (Guj.)] and CCE v G.P. Prestress Concrete Works [2015 (323) E.L.T. 709 (Guj.)].*** He submits that in both these cases, the Hon'ble Gujarat High Court has held that if option is not given by the adjudicating authority or lower appellate authority, the Tribunal has the discretion to give the 25% option if it is found that the amount has been paid along with interest. Relying on this case law, he submits that in the present case also, it should be held that the party has paid 25% penalty correctly, though it has been paid after 30 days' time.

9. In respect of redemption fine, he submits that since the goods were already exported, they were not available for confiscation by the Department. He realises on the case law of ***Commissioner of Customs, CE & ST, Hyderabad-II v. G.M.K. Products Pvt. Ltd. [2020 (373) E.L.T. 692 (Tri. – Hyd.)] and Sunil Kumar Gilra v. Commissioner of Customs (Exp.), Nhava Sheva [2019 (370) E.L.T. 1553]*** wherein it has been held that if the goods have already been exported and are not available for confiscation, no confiscation can be done and redemption fine cannot be imposed. Based on the same, he prays that the redemption fine imposed may be set aside.

10. The Ld. Authorized Representative of the Revenue reiterates the findings of the lower authority. He submits that though the contract clearly specifies that if the moisture content is less

than 8% they will get higher realization, the appellant has not come forward on their own to make the payment of Customs Duty for the higher amount realized by them. He submits that this has come to the knowledge of the Department only after the detailed verification was taken up. He therefore justifies the invocation of the extended period and the orders passed by the lower authorities.

11. We have gone through the documentary evidence submitted and the appeal papers and heard both sides.

12. We find that the issue is in a very short compass. The appellant has realized a higher value from the overseas importer since the moisture content was less. They were required to pay the differential export duty which they have already done and there is no dispute that they have also paid the interest thereon. We find that the adjudicating authority should have given the option to pay the penalty at the rate of 25% of the penalty decided, which has not been done in this case. We find that this issue has been addressed by the Hon'ble Gujarat High Court in the following cases:

> CCE & Cus., Surat-I v Harish Shell Mills [2010 (255) E.L.T. 393 (Guj.)]

> > *"11. Before parting, we observe that the order passed by the Tribunal cannot be said to be a non-speaking and non-reasoned order. The authorities cited by Mr. Oza in support of his submission that a non-speaking order is passed by the Tribunal and hence it deserves to be dismissed, were duly considered by us and we are of the view that they are not applicable to the facts of the present case. The Tribunal while dismissing the Departmental Appeal observed that the*

> *quantum of the penalty is to the extent at around 25% of the duty amount and does not call for any interference. The Tribunal is taking consistent view in the matters of penalty levied under Section 11AC and when the duty amount is paid before issuance of show cause notice, the penalty is reduced to 25% of the duty amount. If the duty amount with interest is not paid in time and even reduced penalty of 25% of the duty amount is not paid in time and option is not given to the respondent assessee, we have taken the view that such option should be given to the assessee and period of 30 days would commence from the date of giving such option. In this view of the matter, no interference is called for in the order of the Tribunal."*

13. So far as the confiscation and imposition of redemption fine is concerned, we find that the goods have already been exported for which export realization has already been received by the appellant. In such a case, the Department could not have confiscated and also sought the imposition of redemption fine on the same. The Tribunal, Hyderabad in the case of *Commissioner of Customs, CE & ST, Hyderabad-II v. G.M.K. Products Pvt. Ltd. [2020 (373) E.L.T. 692 (Tri. – Hyd.)]* has held as under: -

> *"As can be seen, if the goods are confiscated, the title of the goods passes to the Government of India and instead of taking over the goods, the person from whom the goods are seized can be given an option to pay a fine in lieu of confiscation and take the goods. It is only an option to the party under Section 125 is not an obligation or a penalty. The person may not choose the option and allow the goods to be confiscated and the goods will be confiscated and sold by the department. In the present case, if the goods are held liable for confiscation under Section 113 and the option is given under Section 125 the*

> *exporter may not choose the option at all and he does not have to pay the redemption fine. On the other hand, if he chooses to pay the redemption fine then the department is bound to give him possession of the goods which is impossible as the goods have already left the country. For this reason also, the confiscation under Section 113 and the redemption fine under Section 125 are not sustainable as per law in respect of exported goods. Consequently, the penalty under Section 114 also cannot sustain. The penalty imposed by the original authority under Section 114A also is unsustainable as this section provides for "penalty for short levy or non-levy in certain cases". Evidently, no duty is involved in this case. Hence, the question of penalty under Section 114A does not arise."*

14. We find that in the facts of the present case, the ratio of the above case laws are squarely applicable.

15. Considering all the above observations from our side, we set aside the 100% penalty imposed on the appellant and hold that 25% of penalty paid by the appellant would be sufficient and meets the requirement of law. We also set aside the redemption fine imposed on the appellant.

16. Thus, the appeal stands allowed. The appellant would be eligible for consequential relief, if any, as per law.

(Order was pronounced in Open court)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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