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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 79480 of 2018

(Arising out of Order-in-Appeal No. 54/Cus/CCP-GST/2018 dated 27.09.2018 passed by the Commissioner (Appeals) GST, CX & Customs Central Revenue Building, Rajaswa Vihar, Bhubaneswar-7 Odisha)

M/s. Jagwani Projects (P) Ltd. **: Appellant**
568, New Alipore, Ground Floor,
Gangotri Apartment, Kolkata-700 053

VERSUS

Commissioner of Customs, **: Respondent**
Central Revenue Building,
Rajaswa Vihar, Bhubaneswar-7 Odisha

APPEARANCE:

Shri Jnanesh Mohanty,
MS. Sherya Mundhra & Shri Bijay Kumar Sharma for the Appellant

Shri S. Debnath, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.75634/2025

DATE OF HEARING / DECISION: 26.02.2025

Order: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed by M/s. Jagwani Projects (P) Ltd.(herein after referred as the appellant) against the impugned Order-in-Appeal No. 54/CUS/CCP-GST/2018 dated 27.09.2018, wherein the Ld. Commissioner(Appeal) has allowed the appeal filed by the department and rejected the refunds sanctioned to the appellant by the original adjudicating authority.

2. The facts of the case are that the Appellant was engaged in the export of different quantities of

iron ore in bulk at different rates per Dry Metric Ton (DMT) based on specific chemical composition, size, and moisture content. The export contracts were FOB and stipulated price adjustment on account of variation of the elements from the specification as mentioned in the contract. The contracts stipulated that **at the load port**, the buyer shall on their own expenses appoint Mitra S. K. Private Limited and seller will at their expenses appoint SGS India Private Ltd. to undertake joint draft survey. The contract also provided that the weight of the shipment will be ascertained and certified by Mitra S. K. Private Limited and that shall be the basis for seller's commercial invoice.

2.1. The Appellant filed 2 shipping bills for export of 26,500 WMT of Iron Ore to M/s. Bagadiya Brothers (Singapore) Pte. Ltd. and 7 shipping bills for export of 1,05,000 WMT of Iron ore to GRM Resources Pte Ltd., Singapore through Paradeep Custom house. The said Shipping Bills were assessed provisionally at the time of export on the basis provisional invoices issued by the Appellant and analysis certificate issued by the surveyor and accepted by the buyer. Thereafter, the goods were exported after drawing representative samples by the surveyor deputed as per the terms of the contract. Subsequently, after receiving the weight certificate and analysis certificate, the Appellant raised the final commercial invoices on the buyers, and thereafter, payments were made through the authorised banks.

2.2. The departmental authority scrutinised the documents and finalised the assessments of the Appellant. Thereafter, refund applications for extra duty of Rs. 77,83,399/- were filed by the Appellant, which were sanctioned by the proper officer. Subsequently, the Order-in-Originals were reviewed by the Commissioner, Customs (Preventive), Bhubaneswar and an appeal was filed by the proper office before the Commissioner (Appeals). Vide the Order-in-Appeal No. 54/CUS/CCP-GST/2018 dated 27.09.2018, the department appeal was allowed and the refund was rejected on the following grounds:

- The exported goods have not been correctly assessed taking into consideration the test and analysis report of <u>both load port and discharge port</u>. In view thereof, the assessment has been undertaken without following the Circular No. 12/2014-Customs dated 17.11.2014.

- Para 3(c) of the aforesaid Circular specifies that *"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 finalise 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."*

- However, while finalising the assessment on the basis of the documents submitted by the Appellant, the proper officer has neither examined the test report from the discharge port nor obtain the test report from custom house laboratory for deciding the valuation of the exported goods. Since the FOB value has changed to the test report of the load port, the assessment officer should have considered this aspect. In the absence thereof, the procedure contemplated in the Circular No. 12/2014-Customs dated 17.11.2014 has not been followed and therefore, the refund is inadmissible to the Appellant.

2.3. Aggrieved by the impugned Order, the Appellant has filed this appeal before this Tribunal.

3. The Appellant submits that the refund in the present has arisen out of the final assessment orders passed by the proper officer. However, the said final assessment orders confirming the excess duty paid have not been challenged by the department at any stage. The appellant submits that once the final assessment order was passed and the refund has arisen out of such order, the action of the department to deny the refund already granted, without challenging such final assessment order is not legal and correct. Hence all the proceedings in the present case are liable to be set aside on this ground itself.

3.1. In support of their contention, the appellant relied on the following rulings:

- ***Reliance Industries Ltd. v. Commissioner 2024 (11) TMI 752 - CESTAT AHMEDABAD***

- ***Principal Commissioner v. Lava International Ltd. 2023 (3) TMI 25 - CESTAT NEW DELHI***

3.2. The appellant submits that similar view has been taken in the case of ***ITC Limited v. Commissioner 2019 (9) TMI 802-SC,*** wherein it was categorically held that unless the assessment order is challenged, no consequential effect can be given. Accordingly, the appellant submits that the entire proceedings which seek to deny the refund, without challenging the final assessment Orders are liable to be set aside.

3.3. The Appellant further submits that as per Section 14 of the Customs Act, 1962, the value of the export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods. The paid or payable amount has to be arrived at based on terms of the contract with the Foreign Buyer. Accordingly, the transaction value of exported Iron Ore Fines shall be the amount realized from the Foreign Buyer as per the terms of the agreement. In the present case, the Final Invoice against all the Shipping Bills has been issued by the Appellant to the buyer based on the Test Report issued by Mitra S.K. Private Ltd.<u>at the load port</u>. The same is as per the terms and condition of the agreements between the Appellant and the buyer for which the Department has not challenged the final assessment Order. Further, it is undisputed that the Appellant has received the said amount, supported by the Bank Realization Certificates, as per the agreement itself.

3.4. The C.B.I.C. has also directed vide Circular No. 12/2014 dated 17.11.2014 that the Transaction value is to be decided based on the load port test report or discharge port test report, as per terms of contract, where the proper **officer shall compare the two reports as per the terms set out in the contract** and finalize the provisionally assessed shipping bills, under the provisions of Section 14 of the Customs Act, 1962 and the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 duly, supported by Bank Realisation Certificates for the purposes of comparison with the final invoices. Thus, in the present case, the valuation of the exported Iron ore Fines has to be derived at based on the terms of contract with Foreign Buyer and as per the Contractual agreement. Accordingly, the Load Port Test Report in the present case would be the decisive factor for the determination of the value of the Iron Ore fines exported. This stand is further substantiated by the fact that the remittance has also been received in proportion thereof only. The Customs officers cannot change this transaction value or the stipulation of the test report of Mitra S.K. Pvt. Ltd., being the determinant of the transaction value. Thus, the report of Discharge Port report / CRCL Report has no relevance in the present case for deciding the levy of Export Duty. Reliance in this regard is placed on the following decisions:

- ***Bonai Industrial Company Pvt. Ltd. v. Commissioner 2024 (6) TMI 1016 - CESTAT HYDERABAD***
- ***Ore Cast India v. Commissioner (2024) 18 Centax 275 (Tri.-Cal)***

- ***Terapanth Foods Ltd. v. Commissioner (2024) 19 Centax 53 (Tri.-Hyd)***
- ***Hira Steel Ltd. v. Commissioner 2016 (343) E.L.T. 1058 (Tri. - Mumbai) as affirmed by the Hon'ble Supreme Court in 2020 (372) E.L.T. A102 (S.C.)***
- ***Kutch Salt & Allied Industries Ltd. v. Commissioner 2024 (4) TMI 47 - CESTAT HYDERABAD***
- ***Commissioner v. Essel Mining & Industries Ltd. 2024 (12) TMI 888 - CESTAT KOLKATA***

3.5. Thus, the appellant prayed for setting aside the impugned order and allowing their appeal.

4. The Ld. A.R. reiterated the findings in the impugned order.

5. Heard both sides and perused the appeal documents.

6. We observe that the issue involved in this appeal is whether the refund which has arisen out of the final assessment Order passed by the departmental authorities can be rejected without challenging such final assessment order.

6.1. We observe that the Shipping Bills filed by the appellant were assessed provisionally at the time of export on the basis provisional invoices issued by the Appellant and analysis certificate issued by the surveyor and accepted by the buyer. Thereafter, the goods were exported after drawing representative samples by the surveyor deputed as per the terms of the contract. Subsequently, after receiving the weight certificate and analysis certificate, the Appellant raised the final commercial invoices on the buyers, and thereafter, payments were made through the authorised banks. The departmental authority scrutinised the documents and finalised the assessments of the Appellant. Thereafter, refund applications for extra duty of Rs. 77,83,399/- were filed by the Appellant, which were sanctioned by the proper officer. We observe that the orders of finalisation of the provisional assessments were not challenged by the department. The refund has arisen as a consequence of finalisation of the provisional assessments. Thus, we observe that the refunds eligible to the appellant as per the final assessment orders cannot be rejected without challenging the final assessment orders. We observe that this view has been taken by the Tribunal Ahmedabad in the case of ***Reliance Industries Ltd. v. Commissioner 2024 (11) TMI 752 - CESTAT AHMEDABAD.*** The relevant part of the said decision is reproduced below:

> *"This issue has been considered in various judgments including the judgment of Hon'ble Supreme Court in the case of UOI vs Food Specialities (Supra) wherein the following order was passed.*
>
> *"[Order]-C.A. No. 4527 of 1997 Shri Vellapally, learned senior Counsel for the respondent assessee states that this appeal arises out of a consequential order made pursuant to the decision reported in Dalmia Industries Ltd. v. Collector of Central Excise 1992 (61) E.LT. 295 pertaining to classification in respect of the same assessee. He submits that the question of classification was decided by the Tribunal in the assessee's favour and even though a caveat was filed in this Court by the assessee, there is no intimation of any appeal being filed by the Department against the Tribunal's decision*

pertaining to classification. He submits that irrespective of the merits of the Tribunal's decision on the question of classification, if the decision in the assessee's favour has become final, the question of the consequential order about quantum made by the Tribunal in favour of the assessee, cannot alone be challenged by the Department. He submits that this appeal must fail for this reason alone because the question of correctness of the view taken by the Tribunal on the question of classification is no longer open in respect of the product known as 'New Sapan Dairy Special.

2. In view of the above statement made by the learned Counsel for the assessee- respondent, and it not having been shown to us that the Department has challenged the Tribunal's decision on the question of classification reported in Dalmia Industries case (supra), this appeal must fail for this reason alone.

3. The appeal is dismissed.

4. C.A. Nos. 1567/93 and 2482-84/93-The submission of the learned Additional Solicitor General is that the expression 'skimmed milk' also includes partially skimmed milk and for this reason the product should be classified under Heading 0401.13. In the impugned judgment the view taken is that partially skimmed milk powder' is a separate marketable commodity from 'skimmed milk powder' and, therefore, it has to be classified under the Heading 0401.19 and not 0401.13 as claimed by the Revenue. In the impugned judgment, detailed reasons are given for rejecting the Revenue's contentions. Apart from referring to the fact that partially or completely skimmed milk are mentioned as separate products in the main heading itself, it has been pointed out with reference to ISI specification as well as Prevention of Food Adulteration Rules and the International Standard that partially skimmed milk powder' is different from skimmed milk powder and is so recognised therein. Nothing is shown to us against this material to suggest that a different view is preferable for any reason. There is, thus, no ground to interfere in the appeals."

The similar view was taken by the Hon'ble Supreme Court's Larger Bench decision in the case of ITC Limited wherein it was categorically held that unless the assessment order is challenged, no

> *consequential effect can be given. We are therefore, of considered view that since the final assessment order which is undisturbed attained finality and refund has arisen out of such order, at a later stage before Commissioner (Appeals), Revenue cannot made an allegation contrary to the final assessment order, therefore, the impugned order passed by the learned Commissioner (Appeals) is not sustainable, accordingly, the same is set aside. The appeal is allowed with consequential relief.* "

6.2. We observe that similar view has been taken by the Hon'ble Apex Court in the case of ***ITC Limited v. Commissioner 2019 (9) TMI 802-SC,*** wherein it has been categorically held that unless the assessment order is challenged, no consequential effect can be given. Accordingly, we hold that the entire proceedings which seeks to deny the refund, without challenging the final assessment Orders are liable to be set aside.

6.3. Regarding the observation of the Ld. Commissioner (Appeals) in the impugned order that the assessment has been undertaken without following the Circular No. 12/2014-Customs dated 17.11.2014, we observe that C.B.I.C. has directed vide the above said Circular that the transaction value is to be decided based on the load port test report or discharge port test report, as per terms of contract, where the proper **officer shall compare the two reports as per the terms set out in the contract** and finalize the provisionally assessed shipping bills, under the provisions of Section 14 of the Customs Act, 1962 and the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 duly, supported by Bank Realisation Certificates for the purposes of comparison with the final invoices. Thus, in the present case, the valuation of the exported Iron ore Fines has to be derived at based on the terms of contract with Foreign Buyer and as per the Contractual agreement. Accordingly, the Load Port Test Report in the present case would be the decisive factor for the determination of the value of the Iron Ore fines exported. This stand is further substantiated by the fact that the remittance has also been received in proportion thereof only. The Customs officers cannot change this transaction value or the stipulation of the test report of Mitra S.K. Pvt. Ltd., being the determinant of the transaction value. Thus, the report of Discharge Port report / CRCL Report has no relevance in the present case for deciding the levy of Export Duty.

6.4. In view of the above findings, we hold that the refunds eligible to the appellant as per the final assessment orders cannot be rejected without challenging the final assessment orders. As the final assessment orders have not been challenged in this case, the rejection of refund sanctioned to the appellant in the impugned order is legally not sustainable and accordingly, we set aside the same.

7. In view of the above discussions, we set aside the impugned order and allow the appeal filed by he appellant, with consequential relief, if any, as per law.

(Operative part of Order was pronounced in Open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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