

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

REGIONAL BENCH – COURT NO.1

Customs Appeal No.75352 of 2025

[Arising out of Order-in-Appeal No.02/Cus/CCP/2025 dated 27.02.2025 passed by Commissioner (Appeals) of CGST, Excise & Customs, Bhubaneswar]

M/s Bagadiya Brothers Private Limited

(Bagadiya Mansion, Ground Floor, Jawahar Nagar, Raipur, Chhatishgarh-492001)

Appellant

VERSUS

Commissioner of Customs (Preventive), Bhubaneswar

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

Respondent

APPEARANCE :

Shri Jnanesh Mohanty, Ms.Shreya Mundhra & Shri Bijay Kumar Sharma, All Advocates for the Appellant

Shri Subrata Debnath, Authorized Representative for the Respondent

CORAM:

HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)

HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.75696/2025

DATE OF HEARING : 06 MARCH 2025

DATE OF DECISION : 06 MARCH 2025

Per Ashok Jindal :

The appellant is in appeal against the impugned order wherein the rectification of error for finalization of assessment of Shipping Bill under Section 154 of the Customs Act, 1962, has been denied to the appellant.

2.1 The facts of the case are that the appellant is engaged in export of iron ore fines. In the course of its business, the Appellant had filed the Shipping Bills No.2420437, 2420442, 2420444, 2420445 & 2420447 respectively, all dated April 16, 2020 from Gopalpur Port, which was provisionally assessed under Section 18 of the Customs Act.

2.2 According to the legal provisions, if the 'Fe' content of the iron ore fines is less than 58%, then the same is classifiable under Custom Tariff Item 2601 1142, which attracts 'Nil' rate of export duty in terms of Notification No.15/2016-Cus dated March 1, 2016.

2.3 The Hon'ble Supreme Court in the case of UOI v. Gangadhar Narsingdas Aggarwal 1997 (89) ELT 19 (SC) had held that 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 instead of Dry Metric Tonne (DMT) basis, which in other words mean that the percentage of iron ore contents have to be determined taking all the impurities including moisture into account because duty is relatable to weight. The said position was also clarified vide the *Circular No. 4/2012-Cus dated 17.02.2012*. Subsequently, the position has also been laid down by the Hon'ble Bombay High Court in *VM Salgaoncar & Brothers Pvt. Ltd. & Anr. Vs. Assistant Commissioner of Customs (Export) [2023 (11) CENTAX - 215 (Bom)]*, as well as *Commissioner of Customs (Export) v. Vedanta Ltd. (2023) 9 Centax 268 (Cal.)*, which has affirmed the *CESTAT Kolkata Final Order No. 75404 (KOL) of 2022*.

2.4 However, while finalising the assessment vide the Order dated December 28, 2020, the proper officer considered the Fe content in the Iron Ore fines on Dry Metric Tonne (DMT) basis instead of Wet Metric Tonne (WMT) Basis. The proper officer failed to grant an opportunity of hearing to the Appellant and passed the Assessment Order in violation of principles of natural justice.

2.5 Subsequently, on realizing the apparent mistake committed by the Ld. Authority by not considering the law of the land laid down by the Hon'ble Supreme Court in *Gangadhar Narsingdas Aggarwal (supra)* & Circular dated 17.02.2012 to determine the 'Fe' content and the duty liability while finalizing the Assessment Order, the Appellant filed letters before the authority praying for rectification under Section 154 of the Customs Act and re-assessment of the Shipping bills.

However, the said request of rectification of the Shipping Bills under Section 154 of the Customs Act was rejected by the Adjudicating Authority vide letter dated November 13, 2023 solely on the ground that no arithmetical or clerical errors/mistakes have been noticed in the Final Assessment Order. The relevant extract of the same is provided herein-below:

"The shipping Bills No. 2420437, 2420442, 2420444, 2420445 & 2420447 respectively, all dated April 16, 2020 is already finalized on submission of final documents/"original documents/e-BRC etc vide final assessment Order No. C. No. V(2)120/China Friendship/GCD/2020/408, C. No. V(2)121/China Friendship / GCD/ 2020/410, C. No. V(2)117/China Friendship/ GCD/2020/406, C. No. V(2)119/China Friendship/ GCD/2020/404 and, C. No. V(2)118/China Friendship/GCD/2020/412 dated December 28, 2020.

The said Shipping Bills can't be taken up for re-assessment or re-finalization at this stage. However, as requested, to check the light of under Section 154 of the Customs Act, 1962.

"Clerical or arithmetical mistakes in any decision or order passed by the Central Government, the Board or any officer of the Customs under this Act, or errors arising therein from any accidental slip or omission may, at any time, be corrected by the

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Central Government, the Board or such Officers of the Customs or the successor in office of such officer, as the case may be.

I have gone through the impugned Final assessment order, it is surfaced that no such type of clerical or arithmetical errors/mistakes has been noticed in this final assessment order."

2.6 Aggrieved by the said decision of the Ld. Adjudicating Authority, the Appellant filed the appeal before the Commissioner (Appeals), Bhubaneswar. Vide the Order-in-Appeal No. 02/CUS/CCP/2025 dated 27.02.2025, the appeal was rejected on the following grounds:

(i) The Shipping bills were passed on the basis of declarations made by the Appellant/ Exporter. Since there was no correction in the shipping bills, it can be told that the Proper officer has not assessed the shipping bills but accepted the declarations made by the Appellant/ Exporter. The Appellant has never asked Department for consideration of the methodology of determination of Fe content on WMT basis instead of DMT as stipulated by the Hon'ble Apex Court in *Gangadhar Narsingdas Aggarwal*. Also, the Appellant/Exporter/exporter had not paid export duty under protest. Further, the judgment of *Gangadhar Narsingdas Aggarwal* was inapplicable to the present case in as much as duty at that point of time was relatable to weight, i.e., specific rate of duty, whereas presently levy of export duty on iron ore is on Ad-valorem basis, and does not depend on moisture content. Thus, the Appellant has wrongly interpreted the Circular dated February 17, 2012 and failed to observe that the Circular only talks about determining the Contents of Iron Ore' by way of deducting the weight of impurities including moisture to arrive at the net Fe content in absolute terms and

not any ratio terms. Further, the judgment of *Vedanta Ltd.* of the Calcutta High Court is also inapplicable as the present case does not involve assessment by the proper officer but a declaration by the Appellant itself, which has been accepted by the department. Also, the invoice in the present case was issued by the Appellant on the basis of net weight (DMT) and there was no role of WMT as contended by the Appellant.

(ii) After a passage of more than 3 years of the issue of the Assessment order, the Appellant/ Exporter/Exporter vide their letter dated 29.09.2023 intimated that the Fe content of their exported goods Iron Ore fines should have been determined on WMT basis instead of DMT basis as stipulated by the Hon'ble Apex Court in *Gangadhar Narsingdas Aggarwal*. As such, rectification of the Shipping bills was sought by the Appellant under Section 154 of the Customs Act.

(iii) After the implementation of self-assessment, it is not prerogative of the Customs Department to suo-moto allow any benefit/exemption, but in fact, it is the prerogative of the exporter to claim benefit/exemption under any Notification/circular or any decree/judgement if any. In the absence of the same, if at all, the Appellant is entitled for such benefit, they could have challenged the same before the appropriate Appellate authority.

(iv) Section 154 of the Customs Act, 1962 cannot be made applicable to the present case in as much as once the assessment is final in terms of Section 17 *ibid*, the proper Officer becomes *functus officio* (ceases to have control over the matter] and would not have power to review or re-assess an assessment that is final. Thus, a

correction which changes the very nature of assessment is not envisaged in Section 154 and, only a correction of clerical and arithmetical mistakes which do not change the very essence and nature of assessment is permitted in terms of Section 154 *ibid*. The correction sought by the exporter would certainly alter the very essence and nature of assessment in the instant case.

(v) The power of re-assessment by the proper Officer, under Section 17(4), is available only until before the assessment is concluded. In such a situation using Section 154 to re-open earlier self-assessment may not be statutorily feasible, more so, when such an assessment is appealable against. If re-assessment of shipping bills is carried out under Section 154 of the Customs Act, 1962 without any limitation of time, the existence of the provisions of Section 128 and appeal mechanism therein would become redundant and if at all the amendment, even in the nature of re-assessment, are to be carried out under the provisions of Section 154, there is no requirement for the provisions of section 128 or other similar provisions.

2.7 Against the said order, the appellant is before us.

3. The Id.Counsel appearing on behalf of the appellant, submits that in their own case, this Tribunal has decided the issue vide impugned order No.75561/2025 dated 27.02.2025, but he further submits that at the time of argument of the said case, the appellant also relied on the decision of the Tribunal in the case of Vedanta Limited Vs. Commissioner of Customs (Export), Kolkata reported in (2023) 9 Centax 320 (Tri-Cal.), which has been affirmed by the Hon'ble Calcutta High Court as reported in (2023) 9 Centax 268 (Cal). Cognizance of the

findings of the Hon'ble Calcutta High Court, could not be recorded in the said order and further, the order of the Hon'ble Calcutta High Court has been implemented and the refund claim has been granted to the assessee, namely, Vedanta Limited. Therefore, the said findings are also required to be given while passing the order.

4. On the other hand, the Id.A.R. for the Revenue, supported the impugned order.

5. Heard both the parties and considered the submissions.

6. We find that in the appellant's own case, this Tribunal has observed as under :

"6. We find that on merit, there is no dispute that the Shipping Bills were required to be assessed being 'Fe' content on the basis of WMT in terms of the Hon'ble Supreme Court in the case of Gangadhar Narsingdas Aggarwal (supra) and to that extent, a Circular No.4/2012-Cus dated 17.02.2012 has also been issued.

7. A short issue arises in this case as to whether while finalizing the Shipping Bills, no consideration of judicial pronouncements and the circulars cited hereinabove is clerical mistakes/omissions in terms of Section 154 of the Customs Act, 1962, on the part of the proper officer or not ?

8. For better appreciation, the provisions of Section, 154 of the Customs Act, 1962, are incorporated herein under :

"SECTION 154 : Correction of clerical errors, etc. — Clerical or arithmetical mistakes in any decision or order passed by the Central Government, the Board or any officer of customs under this Act, or errors arising therein from any accidental slip or omission may, at any time, be corrected by the Central Government, the Board or such officer of customs or the successor in office of such officer, as the case may be."

9. What is the clerical error/mistake apparent on record has been examined by this Tribunal in the case of Sesa Goa Limited (supra), wherein this Tribunal has observed as under :

"15. In this case the main issue is that whether the provisions of Section 154 of the Customs Act are applicable or not. In fact, it is the duty of the Customs Officer while assessing the Bills of Entry to assess in accordance with law. There is no dispute that when these Bills of Entry was presented before the proper officer for assessment, there was a decision of the Apex Court in the case of TISCO (supra) wherein it was held that no additional duty of customs (cess) is payable on import of coking coal. It is an admitted fact that while assessments were made in respect of the appeals No. C/759/09 to 764/09 and C/767/09 the proper officer omitted to take note of the decision of the Hon'ble Apex Court in the case of TISCO (supra). Section 154 of the Customs Act, 1962 deals with the situation where there is a clerical or arithmetical mistakes in any decision or errors arising therein from any accidental slip or omission at the time of assessing the Bill of Entry and same can be corrected by the proper officer. In these appeals, the proper officer failed to take the cognizance of the decision in the case of TISCO (supra) while assessing the Bills of Entry which can be termed as accidental slip or omission. As per the law dictionary 'omission' means neglect or failure to perform what the law requires and in this case law requires to assess the Bill of Entry after taking note of the decision of TISCO which was omitted by the proper officer. If for such omissions or errors committed by the proper officer, the same is to be corrected while dealing with refund claims filed by appellant, the same will tantamount to be done under Section 154 of the Customs Act, 1962. That is why the legislature incorporated the Section 154 of the Customs Act into the statute book to rectify such omission or error

without challenging the assessment. In the case of Asst. Commr. Income Tax, Rajkot v. Saurashtra Kutch Stock Exchange Ltd. - [2008 \(230\) E.L.T. 385](#) (S.C.) the Hon'ble Apex Court has held that an error apparent would mean an error which strikes on mere looking and does not need long drawn out process of reasoning. In these appeals it is clear from the face of the Bills of Entry that while assessing the Bills of Entry, the decision of TISCO was not considered at all. In the case of Hindustan Lever Ltd. v. Commissioner of Central Excise, Mumbai - [2006 \(202\) E.L.T. 177](#) (Tri.-LB) the Larger Bench of this Tribunal has held, that even if there is a subsequent decision of the Apex Court on the subject, that is to be followed and in this case the decision of TISCO was already there when the Bills of Entry were assessed. In the case of Union of India v. Aluminium Industries Ltd. - [1996 \(83\) E.L.T. 41](#) (Ker.) the Hon'ble Kerala High Court while dealing with the similar circumstances, where at the time of assessment, the correct rate of duty was not applied by the proper officer, later on the same was held by the Hon'ble Kerala High Court as an error arising in assessment on account of omission to apply the correct rate of duty. While dealing with the issue the Hon'ble Kerala High Court has observed as under :-

"Four types of errors are mentioned in the section for invoking power under it: (1) clerical mistakes (2) arithmetical mistakes (3) errors arising from accidental slips and (4) errors arising from accidental omissions. If any one of the above types of errors has crept in, then the corrective power mentioned in the section can justifiably be used. In this case, the error happened due to the omission to know of the new rates of import duty which has resulted in the assessment made at the first instance. When the error was brought to the notice of the authorities they corrected it and imposed a duty of Rs. 11,99,211/- in accordance with the

rate applicable to the goods. The principle underlying in Section 154 of the Act is that records relating to customs duty are maintained properly and correctly and that such records should represent the correct state of affairs. Almost a similar power can be found conferred on the Civil Court by Section 152 of the Code of Civil Procedure. All the four categories of errors enumerated by us above are mentioned in Section 152 CPC also."

As in the case, the decision the Hon'ble Apex Court and the Circular dated 17.02.2012 was in public domain, in that circumstances, it is the duty of the adjudicating authority to take cognizance all the judicial pronouncements and the Circulars and thereafter, to pass the proper order, which the adjudicating authority has failed to do so in the case in hand while finalizing the Shipping Bills.

10. Therefore, we hold that it is an error arose from accidental omissions on the part of the assessing officer under Section 154 of the Customs Act, 1962 as held by this Tribunal in the case of M/s Sesa Goa Limited (supra). Consequently, finalization of the assessment done by the adjudicating authority for determining of the 'Fe' content on DMT instead of WMT basis, is bad in law. Therefore, the said omission is required to be rectified by the adjudicating authority and the consequential benefit is to be given to the appellant by rectifying the omission under Section 154 of the Customs Act, 1962 and thereafter, to determine the 'Fe' content on the basis of WMT basis and pass an appropriate order in accordance with law.

11. Consequently, the impugned order is set aside and the appeal is allowed with consequential relief".

7. Further, we find that the Hon'ble Calcutta High Court has examined this issue in the case of Vedanta Limited (supra), wherein the Hon'ble Calcutta High Court has observed as under :

"3.....

So far as the scope and the powers to be exercised by the authority under Section 154 of the Act are concerned, the appellate authority in the order of remand considered the same and found that there has been a departure from the ratio of law laid down by the Supreme Court in ascertaining the content of 'Fe' and therefore if the authority has adopted a method contrary to the decision of the Supreme Court, it must be regarded as an error or omission arising in the decision. The 'error' arising therein from accidental slip or omission has to be construed in a proper perspective and should not be squeezed in a narrow compass. The error is perceived from the omission or the accidental slip and therefore, the word 'omission' should not be given a restrictive meaning but should be expanded to imbibe within itself an error occurred because of such omission.

4.*We do not delve to go much deep into the above aspect for the simple reason that the authorities have accepted the order of remand passed by the appellate authority on the first occasion and proceeded thereupon and therefore, it is too late in the day to take such a plea at an advance stage of the litigation which, in our opinion, is practically a second round of litigation, though commenced from the original cause. A further argument is advanced by Mr. Maiti that it is a paramount duty of the exporter to make a self-assessment of the duty as envisaged under Section 17 of the said Act. The reliance appears to have been placed upon sub-section (1) of Section 17 which, in our opinion, is misplaced for the simple reason that Section 17 has*

undergone a radical change by way of an amendment (Act 8 of 2011) with effect from 8-4-2011. The instant case pertains to transactions of export prior to 2011 and therefore, the Section which stood as on the date of such export has to be applied which does not mandate the exporter to self-assess the duty by submitting the shipping bills. The amended provisions cannot be pressed in action in relation to transactions prior to coming in force thereof unless the amending Act clearly provides the applicability of such amended provisions to operate retrospectively or by necessary implications. In absence of any such mandate in an amending Act, the law cannot be perceived to operate retrospectively but to operate prospectively i.e. from the date when it came into existence and/or was enforced. The law is always to be looked forward and not backward. There is no fetter on the part of the legislature to express any amendment of the law to operate retrospectively. Having not done so, it is always construed to operate prospectively unless the contrary intention is gathered by necessary implications. The sound reasons behind the aforesaid should be that the thing which is almost settled should not be allowed to be unsettled by a subsequent operation of law. We, thus, do not find any question of law, far less to speak of substantial question of law, involved in the instant appeal.”

The order of the Hon'ble Calcutta High Court has been accepted by the respondent and the refund claims were granted.

8. Therefore, we hold that it is an error arose from the accidental omissions on the part of the assessing officer while finalizing the Shipping Bills under Section 154 of the Customs Act, 1962 as held by this Tribunal in the case of M/s Sesa Goa Limited (supra). Consequently, finalization of the assessment done by the adjudicating

authority for determining of the 'Fe' content on DMT instead of WMT basis, is bad in law. Therefore, the said omission is required to be rectified by the adjudicating authority and the consequential benefit is to be given to the appellant by rectifying the omission under Section 154 of the Customs Act, 1962.

9. Further, in the case of M/s Vedanta Limited (supra), we hold that the error is perceived from the omission or the accidental slip and therefore, the word 'omission' should not be given a restrictive meaning but should be expanded to imbibe within itself an error occurred because of such omission and the same is required to be rectified.

10. Therefore, we direct the adjudicating authority to rectify the finalization of provisional assessment of shipping bills for the purposes of calculation of "Fe" content on WMT basis in terms of the order of the Hon'ble Supreme Court in the case of Gangadhar Narsingdas Aggarwal (supra) and thereafter, to pass a speaking order within a period of one month from the date of receipt of this order. It is also directed that relief as per applicable/relevant Notification be given considering the test report.

11. In the above terms, the appeal is allowed.

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

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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