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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 76954 of 2019

(Arising out of Order-in-Appeal No. 197/CUS/CCP-GST/2019 dated 26.06.2019 passed by the Commissioner (Appeals), G.S.T., C.X. & Customs, Central Revenue Building, Rajaswa Vihar, Bhubaneswar – 751 007, Odisha)

M/s. Indrani Patnaik **: Appellant**
A/6, Commercial Estate, Civil Township,
Rourkela, Odisha – 769 004

VERSUS

Commissioner of Customs (Preventive) **: Respondent**
Bhubaneswar Commissionerate,
Central Revenue Building, Rajaswa Vihar,
Bhubaneswar, Odisha – 751 007

APPEARANCE:

Shri Narendra Kumar Dash, Advocate, for the Appellant

Shri Subrata Debnath, Authorized Representative, for the Respondent

CORAM:

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

FINAL ORDER NO. 77312 / 2025

DATE OF HEARING / DECISION: 18.08.2025

ORDER: [PER SHRI ASHOK JINDAL]

The appellant is in appeal against the impugned order wherein a redemption fine of Rs. 14,61,00,000/- and a penalty of Rs.4,02,224/- under Section 114A of the Customs Act, 1962 have been imposed on the appellant.

2. The facts of the case are that the appellant exported 'iron ore fines' to various overseas buyers during the period 2010-11 under various shipping bills and invoices. The FOB value was declared based on the commercial transaction value at the time of export of iron ore fines. However, post-export, the appellant

realized some higher foreign exchange than the declared value due to certain changes in moisture content & Fe content of materials for which the final invoice value slightly differs from the assessed value taken for calculation of Customs duty.

3. The Directorate of Revenue Intelligence (DRI), Hyderabad initiated investigation into export of iron ore fines made by the appellant during the said period and based on the Report of the DRI, the Revenue rejected the transaction value in the following cases on the ground that the FOB value realized by issuance of final invoice by the appellant was more than the FOB value as considered for assessment of shipping bills by the Customs authorities. The details thereof are as follows: -

Sl.No	Shipping Bills No. and Date	Declared FOB value (in USD)	Actual FOB value as per Final Invoice (in USD)	Difference in value (in USD)	Differential Value in INR (Rs.)
1.	000482/IOF/10-11 dt.16.11.2010	45,54,550	45,74,654.35	20104.35	884591.40
2.	000582/IOF/10-11 dt.07.12.2010	52,25,584	53,12,117.48	86533.48	3915639.97
3.	000667/IOF/10-11 dt.31.12.2010	28,03,416	28,36,133.26	32717.26	1480456.01
4.	000670/IOF/10-11 dt.31.12.2010	35,04,655	35,43,614.38	38959.38	1762911.94
TOTAL		16088205.00	16266519.47	178314.47	80,43,599.32

3.1. Based on the above differential value, the appellant was held liable to pay export duty of Rs.4,02,224/- under Section 28(4) of the Customs Act, 1962. The appellant paid the above amount, along with interest, upon being pointed out by the DRI.

3.2. Thereafter, proceedings were initiated against the appellant, for confiscation of iron ore fines under Section 113(i) of the Customs Act, to demand duty, along with interest and for imposition of penalty on the appellant. During adjudication, the duty paid by the appellant, along with interest, was appropriated, but it was held that the iron ore fines exported by the appellant were liable for confiscation under Section 113(i) of the Act; consequently, an option was given for payment of redemption fine of Rs.14,61,00,000/- in lieu of such confiscation. A penalty of Rs.4,02,224/- was also imposed on the appellant under Section 114A of the Act.

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

4. The Ld. Counsel appearing on behalf of the appellant submits that the ld. adjudicating authority was required to assess the shipping bills provisionally as the same were to be finalized on the basis of the total realized amount, on which the appellant was liable to pay duty. It is submitted that instead of doing so, the ld. adjudicating authority assessed the shipping bills finally. In these circumstances, the Ld. Counsel for the appellant contends that the assessment cannot be reopened without challenging the adjudication order.

4.1. It is his further submission that the shipping bills were assessed finally and on being pointed out by the DRI, the appellant had paid the differential duty along with interest before issuance of the Show Cause Notice. Under such circumstances, the Ld. Counsel for the appellant submits that the Show Cause Notice was not required to be issued to the appellant. To support this contention, he has relied on the decision of this Tribunal in the case of *M/s. MMTC Ltd. v. Commissioner of C.G.S.T. & C.Ex. (Prev.), Bhubaneswar [Final Order No. 75865 of 2025 dated 02.04.2025 in Customs Appeal No. 75082 of 2019 – CESTAT, Kolkata].*

4.2. The Ld. Counsel for the appellant also submits that the goods in question have already been exported and are not available. In these circumstances, it is his contention that a redemption fine cannot be imposed, as the goods are not available for confiscation. In support of his contention, reliance is placed on the following decisions: -

(i) Commissioner of Customs (Import), Mumbai Vers. Finesses Creation INC. [2009 (248) E.L.T. 122(Bom)(HC)]

(ii) Commissioner Vers. Finesse Creation Inc [2010(255)E.L.T A120 (S.C)]

(iii) Commissioner of Cus.Amritsar Vers. Indeep Impex [2008 (228) E.L.T 100(Tri-Principal Bench-Delhi)

(iv) Sun Exports Vers. Commr. Cus(Export), Nhava Sheva [2008 (228) E.L.T 545 (Tri.-Mumbai)]

(v) Best International Vers. Commissioner of Customs (Sea) Chennai. [2004 (178) E.L.T. 278 (Tri-Chennai)]

(vi) Dabur India Limited Vers. Commissioner Customs [Customs Appeal No.75364 of 2025 - Tri-Kolkata]

5. On the other hand, the Ld. Authorized Representative of the Revenue supported the impugned order.

6. Heard the parties and considered their submissions.

7. We find that it is a fact on record that initially, the shipping bills had been assessed finally, although the appellant had recovered an excess amount than the FOB value declared while filing the shipping bills. The appellant paid the differential duty, on being pointed out by the DRI, along with interest thereon. In these set of facts, a Show Cause Notice was not required to be issued in this case, as held by this Tribunal in the case of *M/s. MMTC Ltd. (supra),* wherein it has been observed as under: -

> *"7. We find that the admittedly the appellant realized higher amount in view of the difference in the moisture content. On being pointed out, the appellant has paid the differential duty along with interest as has already been noted in the Show Cause Notice. Therefore, we find force in the appellant's argument that Show Cause Notice itself should not have been issued as per the provisions of Section 28(2) of the Customs Act 1962.*
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> *8. We also find force in the appellant's argument that MMTC being a reputed Public Sector Undertaking, will have no intent to evade the duty for suppressing any factual details. Their bonafides are clarified by the fact that as soon as the issue was raised by the Department they have voluntarily paid the differential duty along with interest.*
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> *9. Taking into consideration this factual details and statutory provisions, we set aside the penalty imposed on the appellant. They would be eligible for consequential relief, if any, as per law."*

7.1. Admittedly, the impugned Show Cause Notice has been issued after payment of differential duty along with interest by the appellant.

8. In these circumstances, we hold that the Show Cause Notice was not required to be issued to the appellant in this case and therefore, the proceedings initiated against the appellant by way of issuance of the impugned Show Cause Notice are set aside. Consequently, the redemption fine and penalties imposed on the appellant are also set aside.

9. In these terms, the appeal is allowed.

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

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd