

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

REGIONAL BENCH – COURT NO.2

Customs Appeal No. 75149 of 2025

(Arising out of Order-in-Appeal No. KOL/CUS(PORT)/AKR/312/2021 dated 18.03.2021 passed by Commissioner of Customs (Appeals), Kolkata)

M/s. Rungta Mines Ltd.

(Rungta House, Chaibasa-833201, Jharkhand)

Appellant

VERSUS

Commissioner of Customs (Port), Kolkata

(Custom House, 15/1, Strand Road, Kolkata-700001)

Respondent

APPEARANCE :

MR. S. C. Chowdhary, Advocate for the Appellant

Mr. S. Chitkara & Mr. S. Debnath, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)

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

FINAL ORDER NO. 77817/2025

Date of Hearing : 24th November 2025

Date of Decision : 24th November 2025

PER R. MURALIDHAR

The appellant is aggrieved by the impugned order passed by the Commissioner (Appeals) holding that the appellant is not eligible for refund which has already been granted to him.

2. The Learned Counsel submits that the issue pertains to the Iron Ore though the contract with the overseas importer was based on the transaction value to be adopted depending on the Test Report and the Dis-charge Report. Consequently, the assessment of the Shipping Bill should have been on provisional basis. However, the Department treated the Assessment as final. The appellant after getting the final test report from the discharge port, produced all the documentary evidence along with the realization details to the authority requesting

that the assessment may be finalized. Their request for assessment was dismissed by the Adjudicating Authority on the ground that the website of Customs Department shows the Shipping Bills to be Finally assessed. Being aggrieved, the appellant has filed the appeal before the Commissioner (Appeals). He has gone through the factual details and after finding that the agreement clearly speaks of the transaction value to be adopted based on the Test Report at the Discharge Report, he allowed the appeal filed by the appellant and directed the Adjudicating Authority to finalize the assessment and grant the refund. The adjudicating authority followed the directions and granted the refunds. Against the OIA passed by the Commissioner (Appeals), no appeal was filed by the Revenue because of which the issue has attended finality. However, after the refund was granted, an appeal was preferred by the Revenue before the Commissioner (Appeals). The Commissioner (Appeals) has allowed the appeal filed by the Revenue on the ground that the Respondent therein (the present appellant) had failed to challenge the earlier finalized Shipping Bills before the Commissioner (Appeals). Being aggrieved, the appellant is before the Tribunal.

3. The Learned Consultant submits the Table containing the chronological events which is reproduced below:-

DATE	PARTICULARS
02.05.2014	RML requests AC, Customs, Kol for finalisation of 19 Shipping Bill No.4941606 relating to liron Ore Fines exported
02.11.2018	AC, Customs, Kol rejects the request of the assessee on the ground that assessment was final at the time of export and the exporter had not challenged the said assessment
	RML filed an appeal before Com of Customs (Appeals), Kol against AC, Cus's rejection order
07.02.2019	Commr. of Customs (APPEALS), Kol allowed the appeal and directed the lower authority to finalise the shipping bills within a period of 6 weeks from date of his order. (Order in Appeal NO. KOL/CUS(PORT)/AA/2058-2060/2018 DATED 11.12.2018)
03.04.2019	The Committee of Commissioners examined the OIA of commissioner (appeals) and accepted the same.
25.04.2019	Asst com of custom, Export Dept, Kol vide OIO No.KOL/CUS/DC/376/EXPORT/19 Dt.25.04.2019 finalised the assessment with the finding that there has been excess payment of Customs Duty of Rs.40,96,515/- which was refundable.

06.06.2019	Commissioner of Customs(Port) accepted the OIO vide F. No.S(Misc)O/O-166/2019(R/C)
	RML submitted Application for Refund to the Asst. Commr as per order issued on 25.04.2019
26.07.2019	Asst. Commr. after completion of all formalities, namely, No Objection from STRC, NPC from Accts. Dept. and Pre-Audit concurrence from IAD sanctioned refund of Rs.40,96,515/- vide Refund Order No.21/2019 and OIO No. KOL/CUS/AC/653/EXP /19 Dt.26.07.2019.
29.10.2019	Com of Customs (Port), Kol reviewed the refund order issued by Asst com of customs and directed the Asst Com of Customs to file an appeal before Com of Customs (Appeal), Kol against the refund order.
	Asst Com of Customs, Kol filed appeal before Com of Customs (Appeal), Kol to set aside the refund order issued by Asst Com of Customs, Export, Kol
22.09.2020	Com of Customs (Appeal) issued Order in Appeal no. Kol/Cus(Port)/AKR/312/2021 dated 22.09.2020 allowing the appeal of revenue and setting aside the order of the Asst./Dy commissioner holding the appellant has filed refund application without challenging the assessment in appeal, therefore, the lower authority has wrongly sanctioned the Refund Claim filed by the appellant.
08.09.2021	RML filed appeal before CESTAT, Kol against the order of Com of Customs (Appeal), Kol a/w Application for Condonation of Delay which was duly granted (APPEAL NO. C/75149/2025

4. From the above Table, he points out that the first Commissioner (Appeals) has treated the assessment as provisional, whereas the second Commissioner (Appeals) (in the impugned order) has treated the same as finalized assessment. He points out that against the first Commissioner (Appeals)'s Order, no further appeal was filed by the Revenue. Hence, the same has reached finality. Therefore, he submits that the impugned order may be set aside the appeal may be allowed.

5. He cites the case law of **SK Sarawagi & Company Pvt. Ltd. Vs. Commissioner of Customs (Port)**, Kolkata decided by this Bench vide Final Order No. 77629-77631/2023 dated 05/12/2023 wherein, in respect of the similar issue, the Bench was pleased to set aside the impugned Order.

6. The Learned AR reiterates the findings of the lower authorities and fairly submits that the first OIA passed by the Commissioner (Appeals) was neither reviewed nor was it challenged before the Tribunal.

7. After going through the factual details discussed above, we find that non-filing of the appeal against the first OIA passed by the Commissioner (Appeals) has proved fatal to the case of the Revenue. Since, it had reached finality and only as consequence of that order, the refund has been granted by the Adjudicating Authority, the Revenue is precluded from taking a stand that the Shipping Bills were finalized and were not provisional at the time of exports. The conclusion arrived at by the Commissioner (Appeals) in the present impugned OIA is erroneous. Therefore, we have no hesitation in setting aside the same. Accordingly, we set aside the impugned order and allow the appeal.

8. The appellant would be eligible for consequential relief, if any, as per law.

(Dictated and pronounced in the open court.)

(R. Muralidhar)
Member (Judicial)

(K. Anpazhakan)
Member (Technical)

Pooja