CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>MUMBAI</u>

REGIONAL BENCH - COURT NO. 01

Customs Appeal No. 87697 Of 2013

(Arising out of Order-in-Appeal No. GOA/CUS/GSK/31/2013 dated 03.04.2013 passed by Commissioner of Central Excise, Customs & Service Tax (Appeals), Panaji, Goa)

Alpine Minmetals India Pvt. Ltd. **.....Appellant**
R/AT 304, 6th Block, Heritage Estate Dodda Ballapura Road, Yelahanka, Bangalore-64.

VERSUS

Commissioner of Customs-Goa **.....Respondent**
ICE House, EDC Complex, Plot No. 6,
Patto, Panaji, Goa-403001.

<u>Appearance:</u>

None for the Appellant
Shri D. S. Maan, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M. M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86363/2023

Date of Hearing: 07.09.2023
Date of Decision: 07.09.2023

PER : S. K. MOHANTY

None appeared for the appellant despite issuance of notice by the registry of this Tribunal. On perusal of the records, we find that the matter was listed for hearing on different dates i.e. 18.01.2023, 03.04.2023, 14.06.2023 and today. On the perusal of the records, we find that the last hearing notice was issued to the appellant and a copy of the same has also been endorsed to the counsel mentioning that this is the last chance and no further adjournment shall be given. Since, the appellant is not present today, either by itself or by representative of the appellant, we are of the view that the applicant is not interested in pursuing their statutory right for appeal. Therefore, with the assistance of

Learned AR for the revenue, we take up the appeal for final hearing on disposal today.

2. Learned Commissioner (Appeals) Central Excise, Customs and Service Tax, Panaji, Goa has upheld the adjudication order passed by the original authority, holding that the date of issuance of the Let Export Order should be considered as final for the purpose of computation and levy of the export duty on exportation of the goods. We find that the shipping bill in this case was filed by the appellant on 21.12.2011 and on the same date of the proper officer had assessed the shipping bill on provisional basis, pending submission of test report, bank realisation certificate, etc. During the material time, the export duty payable on iron ore was 20% ad valorem. The rate of duty was subsequently enhanced by Notification No. 129/2011-Cus., dated 30.12.2011 to 30% ad valorem. Since, the Let Export Order was issued on 30.12.2011, the rate of duty prevalent on such date should be considered as the appropriate duty for the purpose of discharge of duty liability on exportation of the goods. We find that the Learned Commissioner (Appeals) while dismissing the appeal on such ground has relied upon the judgements of Hon'ble Bombay high Court in the case of Prime Mineral Exports Pvt. Ltd. Vs. Union of India – 2010 (257) E.L.T.414 (Bom.) and also in the case of Narayan Bandekar & Sons Pvt. Ltd. vs. Commissioner of Customs & Central Excise, Goa - 2010 (259) E.L.T. 362 (Bom). Since the issue with regard to determination of the correct rate of duty, in view of filing of the Let Export Order is no more open for any debate in view of the un-ambiguous provisions contained in Section 51 (1) read with sub-section (1)(a) of Section 16 of the Customs Act and the judicial pronouncement relied upon by Learned Commissioner (Appeals), we are of the considered view that the appeal filed by the appellant cannot be sustained on merits.

3. Therefore, we do not find any infirmity in the impugned order passed by the Learned Commissioner (Appeals), accordingly, the appeal filed by the appellant is dismissed.

(Dictated and pronounced in the open court)

(S. K. Mohanty)
Member(Judicial)

(M. M. Parthiban)
Member (Technical)

Sm/kpw