

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 89340 OF 2014

[Arising out of Order-in-Original No: 74/2014/CAC/CC(I)/AB/Oil Unit dated 23rd June 2014 passed by the Commissioner of Customs (Import), Mumbai.]

Reliance Infrastructure Ltd

Reliance Energy Centre, Wester Express Highway
Santacruz (E), Mumbai 400055

... Appellant

versus

Commissioner of Customs (Import)

New Customs House, Ballard Estate, Mumbai - 400001

...Respondent

APPEARANCE:

Shri Mihir Mehta, Shri Suyog Bhawe and Shri Ananta Khandait, Advocates for the appellant

Shri DS Maan, Deputy Commissioner (AR) for the respondent

CORAM:

**HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)**

FINAL ORDER NO: 87453/2024

DATE OF HEARING:	10/06/2024
DATE OF DECISION:	04/12/2024

PER: C J MATHEW

This appeal of M/s Reliance Infrastructure Ltd, pertaining to
42090 metric tonnes of 'steam coal', chargeable to duty at the rate

corresponding to tariff item 2701 1920 of First Schedule to Customs Tariff Act, 1975 to which is attached the benefit of notification no. 12/2012-Cus dated 17th March 2012, that was imported against bill of entry no. 7715305/21.08.2012, challenges revision thereto, for fitment as 'bituminous coal' corresponding to tariff item 2701 1920 of First Schedule to Customs Tariff Act, 1975 with differential duty of ₹ 2,63,33,777 demanded under section 28 of Customs Act, 1962, along with interest therein under section 28AAA of Customs Act, 1962, and imposition of penalty of ₹ 50,00,000 under section 112 of Customs Act, 1962, in order¹ of Commissioner of Customs (Import), New Customs House, Mumbai.

2. The impugned order has drawn upon the specificity of sub-heading note 2 of chapter 27 of First Schedule to Customs Tariff Act, 1975 as required by the primary rule for liberal interpretation of statutes, upon the lack of authority to consider 'intended usage' as factor in determining classification and upon the correct method of determination of 'volatile matter' and 'calorific value' – the parameters of distinguishment in the said sub-heading note.

3. Learned Counsel for appellant submitted that an identical dispute before the Tribunal, in relation to imports effected by the appellant between March 2012 and February 2013, was decided in their favour in

¹ [order-in-original no. 74/2014/CAC/CC(I)/AB/Oil Unit dated 23rd June 2014]

Reliance Infrastructure Ltd v. Commissioner of Customs (Preventive), Mumbai [2023 (7) TMI 447 - CESTAT MUMBAI]. He further submitted that, though the said decision had been challenged before the Hon'ble Supreme Court, pendency of its disposal should not stand in the way of deciding the present appeal as they, themselves, are respondents therein and not riding 'piggy back' now on decision in favour of another entity.

4. Learned Authorized Representative conceded that the present dispute is not at variance with that decided by the Tribunal but submitted that the decision of the Tribunal in *Coastal Energy Pvt Ltd v. Commissioner of Customs, Central Excise & Service Tax, Nagpur [2014 (310) ELT 97 (Tri-Bang)]*, affirming the substituted classification, which, though pending in appeal before the Hon'ble Supreme Court, was contrary to decision in the case of the appellant, besides which earlier decision of Larger Bench of Tribunal in *Tamil Nadu Generation & Distribution Corp Ltd v. Commissioner of Customs, Tuticorin [2017 (348) ELT 585 (Tri-LB)]* and of Tribunal in *National Aluminium Co Ltd v. Commissioner of Customs & Service Tax, Vishakapatnam [2018 (361) ELT 939 (Tri-Hyd)]*, in *CESC Ltd v. Commissioner of Customs (Port), Kolkata [2018 (360) ELT 1047 (Tri-Kolkata)]*, in *Commissioner of Customs, Kandla v. Varasana Ispat Ltd [2019 (368) ELT 112 (Tri-Ahmd)]* and in *Maheshwari Brothers v. Jairaj Ispat Ltd v. Commissioner of Customs, Vishakapatnam [2015 (1) TMI 208 – CESTAT BANGALORE]*, were not made known while arguing the dispute now held up as precedent

by the appellant herein.

5. Learned Counsel intimated that the Tribunal, in *re Tamil Nadu Generation & Distribution Corp Ltd*, had merely disposed off the appeal without rendering a decision and was followed similarly in *re National Aluminium Co Ltd* which, upon being carried in appeal, was remanded both to the Tribunal by the Hon'ble Supreme Court thus

'3. Taking note of the said fact, the Customs, Excise and Service Tax Appellate Tribunal had disposed of the appeals, without deciding the question either way, in view of the pendency of the matter in this Court and giving liberty to the respondent herein to come again after having verdict from the Supreme Court. We do not understand this manner of disposing of the appeal. The Tribunal should have kept the appeal pending till the decision of Civil Appeal No. 9725 of 2014 or decide the matter on its own merits.'

in *National Aluminium Co Ltd v. Commissioner of Customs (Preventive)* [2019 (23) GSTL 161 (SC)]. It was also pointed out that, in appeal of Revenue against the decision in their own dispute, at the stage of admission, the Hon'ble Supreme Court took note of one of the grounds alluded therein and responded thus

'We do not approve of such kind of aspersions being cast on the CESTAT or any other Tribunal/Court. Merely because the matter is pending before this Court as long as there is no direction not to hear similar cases before other Tribunals/ courts passed by this Court, the pendency of a matter before this Court would not come in the way of other Tribunals/Courts deciding similar case.'

in *Commissioner of Customs (Preventive), Mumbai v. Reliance Infrastructure Ltd* while directing² notice to be issued.

6. In view of the pendency of appeals in various disputes and that the present appeal pertains to single bill of entry which, for one reason or other, had not been included in the disputed transactions decided earlier even though occurring during the coverage of that decision, we take up this appeal for disposal. The impugned order has relied upon the formula, just as in the earlier dispute that was disposed off, for conversion of 'load port analysis' as appropriate for distinguishment in terms of note *supra* in chapter 27 of First Schedule to Customs Tariff Act, 1975. The adjudicating Commissioner has held that

'31.1 I find that the contracts between the supplier /seller and the importer/ buyer stipulates that an independent Surveyor has to be appointed by importer and overseas seller to carry out sampling and analysis of coal at the load port and the report is known as Certificate of Sampling and Analysis.. This report also known as Load Port Sampling and Analysis report in common parlance is always submitted along with other documents like invoice and packing list to Customs while filing bill of entry by the importer. The value in this report is normally accepted by Customs while allowing clearance of imported coal. During course of investigation it was also seen that the Noticee has submitted Load Port Sampling and Analysis report issued by M/s PT PROTEKNIKA JASAPRATAMA. The Test Report did not mention the Gross calorific value (GCV) on moist, mineral-matter-free basis and

² [order dated 22nd January 2024 in civil appeal diary no. 47176/2023]

volatile matter limit on dry, mineral-matter-free basis as per ATSM standards and mentioned value on As Received Basis and Air dried Basis. The said Load Port sampling and analysis reports when re-worked out as per parr formulas and ASTM standards showed that in coal imported vide Bill of entry No.7715305 dated 21.08.2012, volatile matter limit on a dry mineral matter free basis exceeded 14% and Gross calorific value (GCV) determined on a moist mineral matter free basis exceeded 5833 Kcal /Kg. In fact the Gross calorific value (GCV) on moist mineral matter free basis were found 6259.66 Kcal /Kg in the coal imported in this case.

31.2 I find that as per the literature 'Coal Production and Preparation Report' downloaded from the website <https://www.eia.gov/cneaf/coal/pacje/surveys/eia7ainsi.pdf> it is clear that dry, mineral-matter free basis means total moisture and mineral matter have been removed and moist, mineral-matter free basis means the natural inherent moisture is present but mineral matter has been removed and moist coal does not include visible water on the surface and the Volatile Matter (on dry, mineral-matter-free basis) and Gross calorific Value(on moist, mineral-matter-free basis) can be derived by applying the following Formulas:-

Dry, mineral-matter free fixed carbon percentage = $100 (FC - 0.15S) / (100 - (M + 1.08A + 0.55S))$

Dry, mineral-matter free volatile matter percentage = $100 - (Dry, mineral-matter free FC)$

Moist, mineral-matter free Btu content = $100 (Btu - 50S) / (100 - (1.08A + 0.55S))$

31.3 I find that the Joint Director, Customs Laboratory, Jawaharlal Nehru Customs House, NhavaSheva, Raigad, Maharashtra vide a letter F.No: JNCH/T.O./2012-12 dated

07.03.2013 confirmed the applicability of the said formulae to the coal imported to arrive at Dry, mineral-matter free volatile matter percentage and Gross Calorific Value (on moist, mineral-matter-free basis). He also confirmed that (he values of Ash content, Sulphur content and Btu are to be applied on Air Dry Basis (ADB). When calculated as per above mentioned formulae, it is seen that in the consignment imported vide Bill of entry No.7715305 dated 21.03.2012 by the Noticee., volatile matter limit (on dry, mineral-matter free basis) works out to be more than 14% and calorific value limit (on a moist, mineral-matter free basis) works out to be greater than 5,833 kcal/kg .

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31.8 I find that. M/sPT PROTEKNIKA JASAPRATAMA ,in their load port Certificate of Sampling and Analysis Report submitted by the Noticee .have mentioned both ARB as well as ADB value to the Customs. I also find that Total Moisture have been given on ARB basis but inherent moisture value has been given on ADB basis only , Further from the definitions available in the publications mentioned above it is clear that Air dried means drying by exposure to air and value of Air Dried Basis (ADB) includes inherent moisture hence the same only has to be used in calculation to arrive at calorific value on moist, mineral-matter-free to determine Bituminous Coal. Moreover when only ADB value mentions 'Inherent moisture value' is mentioned on AIR DRIED BASIS (ADB) in the load port analysis report, there is no reason why the same cannot be taken for calculation in parr formulae as mentioned in ASTM D388, which clearly said that value should be on inherent moisture containing basis.

31.9 I find that the Noticee has enclosed a photo copy of certificate of discharge port dated nil purported to be

Certificate of Analysis showing arrival date as 28.08.2012 and reporting date as 21.11.2012. The said report has been issued on Reliance letter head and does not bear any name or stamp of the certificate issuing authority as well as authorization to issue the said report. I find that the said certificate does not bear any authorization and appears to be issued at the insistence of the Noticee after detection of the case to save the Noticee from paying due customs duty. Even in the said certificate value of Inherent moisture has been shown on Air Dried Basis (ADB) and no test was done to arrive at Equilibrium Moisture. This itself contradicts the argument of the Noticee that Equilibrium Moisture is the value of the Moisture in Coal to determine the calorific value on Moist mineral matter Free Basis. Hence I reject the same and concur with the view of the Joint Director, Customs Laboratory, Jawaharlal Nehru Customs House, Nhava Sheva, and hold that the Gross calorific value (GCV) on moist mineral matter free basis has been correctly determined after taking value on ADB basis as given in Test Report issued by the Testing Agency.'

7. This aspect in facts, as well as other submissions on classification, had been specifically dealt with in *re Reliance Infrastructure Ltd* thus

'8. As seen from the records, and also from submissions of Learned Authorized Representative, coal is categorized in the American Society for Testing and Materials (ASTM) standards by rank, according to the degree of metamorphism, or progressive transformation from 'lignite' stage, which, by the range of physical and chemical properties, assist in predicting 'behaviour' of coal at the stage of consumption. The 'certificate of sampling and analysis (CoSA)', in addition to 'gross calorific value (GCV)' for each sample, included moisture

content - total and inherent - ash content, volatile matter content and sulphur content. We notice that the 'volatile matter', in each and every sample, varies between 34.98 kcal/kg and 42 kcal/kg leaving no room for doubt that, owing to 'volatile matter (VM)' being more than 14% spelt out in sub-heading note 1 in chapter 27 of First Schedule to Customs Tariff Act, 1975, the impugned goods are other than 'anthracite coal' of sub-heading 2701 11 of First Schedule to Customs Tariff Act, 1975. We also notice that 'gross calorific value (GCV)' varies between 4293 and 5811 kcal/kg and, thereby, appearing to extricate it from the purview of 'bituminous coal' of sub-heading 2701 12 of First Schedule to Customs Tariff Act, 1975, with threshold of 5833 kcal/kg, as spelt out in sub-heading note 2 in chapter 27 of First Schedule to Customs Tariff Act, 1975. Yet, the dispute does not end there for, according to customs authorities, the 'as received basis (ARB)/(as dry basis (ADB)' values of the coal at load port, after adjustment for factoring in the other details in 'certificate of sampling and analysis (CoSA)', was in excess of the benchmark of heating potential in the relevant Note in chapter 27 of First Schedule to Customs Tariff Act, 1975. And on that, the dispute turns.

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18. *At the core of the dispute is the assertion of the adjudicating authority that 'steam coal' of a particular kind is classifiable only in tariff item corresponding to description as 'bituminous coal' and that the scheme of segregation espoused in the relevant sub-heading notes permits determination with reference to any formula that is mutually agreed upon between buyer and seller. The claim of the appellant that the tests, in accordance with prescription of American Society for Testing and Materials (ASTM), at load port and that, in accordance*

with IS stipulation, at port of discharge, conformed to the exclusion by application of the very same sub-heading note was repelled in the impugned order.

19. *There is no dispute that essential values, commonly used for estimation of worth of coal and for conformity with the regulatory framework, are available in the reports that were generated at load port; there is no contention that the values were fraudulently emplaced in the reports or that the reports pertain to some other lot. Indeed, there is no allegation of any taint to the 'certificate of sampling analysis (CoSA)', as such, or that any of the certifications indicate 'gross calorific value (GCV)' to be in excess of the threshold; indeed, the re-determination has been worked on certain interpretations of the values in the formula which Revenue claims to be implicit in the formulation as incorporated as sub-heading notes in chapter 27 of First Schedule to Customs Tariff Act, 1975. The formulation referred to are the specifications for standardizing test reports, i.e. 'volatile matter on dry, mineral-matter free' basis and 'calorific value on moist, mineral-matter free' basis which, according to the impugned order, requires re-adjustment according to the state of the sample.*

20. *It would, however, be misconception and, indeed, presumptuous for customs authorities to convince that standards, such as American Society for Testing and Materials (ASTM) and Indian Standard (IS), have been devised for ease of tax administration. The standards have existed, and guided by commercial imperatives, for decades in an uncoordinated trading universe and its availability for the customs tariff to draw upon for elaboration of the hierarchy of enumeration in the chapter for coal is only fortuitous. There is no formulation for 'steam coal' in the First Schedule to Customs Tariff Act, 1975 and, though, one does for 'bituminous coal',*

dichotomizing of 'steam coal' within that is not readily apparent thus opening up possibility for dispute for that very reason. And it has done so in this very instance.

21. Coal is a bounty of Nature that occurs as localised concentrations and, by its very remoteness from places of deployment, implies voluminous shipments with appropriate commercial stake. Coal draws worth from its combustion capacity - by direct application of heat in manufacturing process or indirectly by generation of steam used for deriving energy of one sort or another. The heating capacity is proportional to carbon content which, being a natural element, not only varies from source to source but is also contingent upon presence of retarding extraneous matter. A contemporary handicap is the polluting potential of extraneous matter, particularly sulphur. Coal is, essentially, dead vegetation whose decay has been terminated by pressure of layering over that pushes existing debris further into the earth and, over a period of time, to such depths that it acquires its typical solidity. Thus, uncut peat transforms into lignite and thereafter to anthracite after passing through the phase of bituminous. Several factors combine in accelerating the progression before it reaches inaccessible depths and the most significant of all is temperature; it is, therefore, not necessary that the most evolved coal is found only at the deepest layers and it is these factors that influence location of the coal types at different places.

22. Anthracite coal is considered superior and relatively scarce; its characteristic of very high carbon permits deployment at the high end of the spectrum in sophisticated equipment. Bituminous coal is most widespread and is primarily used in heating for generation of thermal power; the oozing of the tarry substance, from which the name is derived,

renders such coal unsuitable in direct application that would clog equipment. The higher end variant of this coal may, by a process of controlled heating, yield 'coke' (met coke) that could supplement anthracite coal use and is categorised as 'coking coal' which, possibly, owing to potential for transformation beyond bituminous has earned a separate entry for customs classification too. Possibly, 'steam coal', which has specific potential too, was separately categorised in the customs classification at the national level in similar policy formulation. No one, however, has chosen to ascertain that from an authentic source and, consequently, we are left that less enlightened; all that we are able to confirm is that evident prejudice against availment of exemption has coloured fair determination of that critical aspect.

23. Leaving aside the handicap, unlike 'coking coal' having meaning assigned to it in the exempting notification, of lack of definition of 'steam coal' in the tariff and unavailability of policy inputs on intent of incorporating separate entry for 'steam coal', supposedly of impliedly low 'gross calorific value (GCV)' below sub-heading corresponding to 'others' in heading 2701 of First Schedule to Customs Tariff Act, 1975, it would appear that vagaries of distribution in coal formation, involving logistical complexities and deployment uncertainty, necessitated establishment of standards for contractual compliance in high stake commercial negotiations. We are, here, concerned with 'bituminous coal' and its most significant commercial characteristic, as incorporated in the tariff too, is 'gross calorific value (GCV)' or the heating potential. Traditionally designated as Btu, it is the heat required to raise the temperature of one pound of water by one degree Fahrenheit and is expressed as 'Btu/lb' or as 'kcal/kg' in the metric system. The accepted test procedure, known as 'proximate analysis' of a sample is expressed as 'fixed carbon',

'ash', 'volatile matter' and 'moisture' content with 'ultimate analysis', which is not relevant here, isolating the elements that make up 'volatile matter' in the coal sample.

24. The sub-headings in chapter 27 of First Schedule to Customs Tariff Act, 1975 adopted definitions consistent with the standards developed, and accepted, over the long period of increasing dependence on coal for industry, transportation and energy. The evaluation of 'fixed carbon', at or more than 86% (on dry, mineral matter free basis) with 'volatile matter' constituting the remaining 14% or less, as the determinant of 'anthracite' bears the insignificance of 'heating value' insofar as coal of this rank is concerned. For the rest, it is "gross calorific value" of 5833 kcal/kg (on moist, mineral matter-free basis)' that segregates 'bituminous coal' from 'other coal' for the purposes of setting tariff level enumeration in accordance with national priorities. This distinction, by coal rank, is of insignificance if tariff policy chooses not to distinguish among them; it is the rate on the right-hand side that assigns importance to this distinction and it is a responsibility upon distinguishment, when appended to 'rate fitment', for the intent to be unambiguous. Therefore, attaching too much of relevance, in the absence of standard for reference, to the terms, such as on 'dry, mineral matter free basis' and 'on moist, mineral matter-free basis', is demonstrative of lack of appreciation of the purpose of that designating. It is carbon that, upon ignition, provides heat and to the extent that there is hardly any residue, with potential for clogging the system, description in terms that place emphasis on absence of moisture and mineral matter is appropriate. On the other hand, for coal of lesser rank, the residue could impact 'cleanliness' of operation and even cause dispersal that may not be regulation-compliant while moisture is clear indicator of the compensatory quantity requirement for generating desired

level of energy; hence the weightage to moisture. Above all, it must be remembered that coal is not subjected to beneficiation at the consumer end and is utilized as it is which, generally, implies inherent moisture content and mineral matter as received. The adjudicating authority has placed too much premium on the said expressions in the sub-heading notes without considering relevance to the 'certificate of sampling and analysis (CoSA)' or the significance of formula, and more especially, in conversion. Doubtlessly, the investigation, and we use the word advisedly as there has been no scrutiny of the tabulated information by the adjudicating authority who has merely approved the arrangement in Annexure B to the show cause notice, are happy with their mathematical reformulation which carries that derived 'gross calorific value (GCV)' beyond the threshold to reaches of higher duty liability.

25. A measure is no indication of the measuring system and to believe that all parameters in a test report emanate from a single test, amenable to cross-computation for deriving results, is delusional. Values are not the same as composition. This adjuring is necessary when an adjudicatory determination has, apparently, proceeded conversely. 'Gross calorific value' has a definitional standard that is not performed easily and, even if possible, lacks precision; for a kilogram or pound of water to be heated through a degree in Celsius or Fahrenheit scale for determining heating potential would be test of patience rather than a test of content. Hence the instrument known as 'bomb calorimeter' has been engineered for that purpose. The retardants to heating potential of carbon in coal are moisture and volatile matter; the content of the former is determined by weight and of the latter by weight of the ash residue. These ascertainties serve the purpose of estimating the quantity of coal required for obtaining the desired energy level and not for determination of 'gross calorific value' even if a series of

experiments may assist in estimating commercial value of coal at a particular source. To perceive conversion formulas as capable of deriving values from composition percentage is neither mathematically acceptable nor scientifically credible. And that has occurred in the present dispute.

26. From what we have seen and heard so far, there is no controversy for the 'proximate analysis', undertaken at load port and conforming to ASTM, indicated 'gross calorific value (GCV)' to be below the threshold for classification as 'bituminous coal' in chapter 27 of First Schedule to Customs Tariff Act, 1975. However, the notation - ARB/ADB for 'gross calorific value (GCV)' and ADB for 'inherent moisture' and 'volatile matter' did. The key contention of customs authorities, in the show cause notice is that

'9....calculation of calorific value on mineral moist free basis is based on parr formula..'

as per ASTM D388 specification which warrants adjustment when sample is drawn on 'as received basis (ARB)' or 'air dry basis (ADB)' as was in the impugned consignments. Applying the formula in reverse, the 'gross calorific value (GCV)' was re-worked to arrive at numbers above the threshold and thus deny the classification as well as the benefit of exemption. Bereft of all the hype and the contours of the science involved, the issue for resolution is the appropriateness of the conversion effected within the purpose for which Parr formula was devised. It also appears from

'11. As per the Coal Classification System of the US Geological Survey Circular 891....

Formulae

Dry, Mineral matter free FC = $100 (FC-0.15S)/(100-(M+1.08A+0.55S))$

Dry, Mineral matter free VM = $100 - \text{Dry, Mineral matter free FC.}$

$$\text{Moist mineral free Btu} = 100(\text{Btu}-50\text{S})/(100-(1.08\text{A}+0.55\text{S}))$$

Where

Btu = Gross calorific value, Btu/lb

FC = Fixed carbon, %

VM = Volatile Matter, %

M = Moisture

A = Ash content, %

S = Sulfur, %

**The quantities are all on inherent moisture basis.*

12. The values of Ash content, sulphur and Btu are to be applied on Air Dry Basis (ADB) as confirmed by the Joint Director, Customs and Central Revenue Control Laboratory (CRCL) vide letter F. No. JNCH/T.o./2012-12 dated 7-3-2013.'

narrated in the show cause notice, that the 'conversion formula' for 'gross calorific value (GCV)' has been applied by deploying values post 'certificate of sampling and analysis (CoSA)' to arrive at the revisions.

27. However, the adjudicating authority has not ventured to consider the 'chicken and egg' analysis of the method adopted for measuring 'gross calorific value (GCV)' of coal. That this is a 'mathematical value', expressed in per kilogram terms to a specific outcome, viz., the raising of temperature of a kilogram of water by one degree on the Celsius scale - a theoretically cumbersome and haphazard process save for the invention by Marcellin Berthelot, the founder of organic chemistry - in bomb calorimeter appears to have been ignored; that such determination from a sample of powder, bereft of moisture and mineral matter, needed adjustment only for the missing element in the qualification was also equally ignored in the eagerness to carry out algebraic permutation for arriving at the desired result to charge higher rate of duty. Several fatal

errors have been committed in the impugned proceedings in consequence.

28. In Annexure B of the show cause notice, adopted as a given in the adjudication order, 'gross calorific value (GCV)' - on 'air dry basis' - was converted, at a certain point, into 'gross calorific value (GCV)' - BTU - by applying a factor of 1.8 without any reasoning for the same and, indeed, the objective of converting a measure in SI to a measure of the British system only to be reversed at a later stage by converse application of the same factor is mystifying to say the least. We can only conjecture that the investigators had a penchant for playing with figures. The sole difference between the two measures is that temperature of one pound-weight of water (instead of one kilogram) is raised by one degree Fahrenheit (instead of Celsius) to be expressed in terms of pound-weight (instead of kilogram) of coal and while, undoubtedly, both temperature scale and weight are amenable to conversion using appropriate formula, the attempt at conversion for applying that which is claimed to be ASTM stipulations betrays lack of comprehension of both science and mathematics.

29. There is, in addition, lack of comprehension about the conversion of 'gross calorific value (GCV)' in load port 'certification of sampling and analysis (CoSA)' - for being on 'as received basis (ARB)' - into 'gross calorific value (GCV)' - on 'air dry basis (ARB)' by application of factor that coal with inherent moisture bears to moisture free coal which should have sufficed to arrive at 'gross calorific value (GCV)' 'on moist basis'; that, however, would not have suited the investigators for that proved to be below the threshold of '5833 kcal/kg' in the sub-heading notes. Therefore, even going by their own calculation, the investigators carried out a superfluous exercise beyond 'gross calorific value (GCV)' on

'air dry basis (ADB)' to contrive a measure that has no rationale.

30. All that was required to be done was to convert 'moisture free mineral matter free' 'gross calorific value (GCV)' - obtained on bomb calorimeter to inclusion of 'inherent moisture' to qualify in the manner expressed in the sub-headings without having to convert to the British (BTU) system and to be reversed subsequently. The formulae, sourced from the World Coal Institute, intended for conversion of moisture factor among available measure - on air dry, dry and as received basis - without the need for the supplementary formulae in Annexure B to the show cause notice that the investigators have, incorrectly, presumed to be a chain of computations to arrive at the correct, as it were, heating value.

31. Without ascertaining the method by which 'gross calorific value (GCV)' was determined for inclusion in the 'certificate of sampling and analysis (CoSA)' issued at load port and in the absence of any finding that this was not directly deduced from bomb calorimeter and as content of 'moisture', 'ash' 'volatile matter' and 'fixed matter' in coal sample will not, of itself, derive the heating capacity as 'kcal/kg', there is no reason to suppose that it was not 'steam coal' to be classified elsewhere. Consequently, the formula devised for reverse working from 'moisture free mineral matter free' basis 'gross calorific value (GCV)' for computation in terms of any one or other description in sub-heading notes in chapter 27 of First Schedule to Customs Tariff Act, 1975 is not required to be worked out sequentially as the table in Annexure B has done to obtain outcomes that are inexplicable, unfounded and lacking in rationale.

32. It is also disturbing that, in the circumstances of a technical dispute arising from entitlement to exemption accorded for a

particular objective by the Government of India with deployment of imported goods for that purpose by the appellant not being in doubt at all, the customs authorities forced deposit of duty and interest without awaiting adjudicatory outcome. Section 28 of Customs Act, 1962 does not countenance such extra legal measures. A statutorily established agency of the State enforcing its writ thus without according respect to process laid down by law whittles away not only its authority but also the authority of the law itself. The appellant has also been denied access to substantial business asset thereby and it is only appropriate that, in addition to consequential relief, the cost of funds made available to the State without the authority of Article 265 of the Constitution be recompensed with interest of 12% per annum and within four weeks of receipt of this order. That, in our view, is the only rein that customs authorities may take to heart and desist from pursuing such unreasonable and irresponsible solutions.'

before concluding that

'33. It is, thus, clear that, on ss'as received basis (ARB)' and 'air dry basis (ADB)', the 'gross calorific value (GCV)' - comprising both types of moisture and inherent moisture respectively - are below the threshold of 'bituminous coal' in all the samples. The attempt by the adjudicating authority to classify the impugned goods within the description 'bituminous coal', corresponding to tariff item 2701 1200 in the First Schedule to Customs Tariff Act, 1975, fails. The claim for classification as 'steam coal' corresponding to tariff item 2701 1920 of First Schedule to Customs Tariff Act, 1975 remains undisturbed. Eligibility for benefit of notification no. 12/2012-Cus dated 17th March 2012 cannot be denied.'

8. The finding on facts in the impugned order has, unabashedly and undisputedly, placed emphasis on the same conversion factor that has been held to be illogical, inappropriate and inconceivable. Consequent to the finding *supra* in the other disputes of the period, the same inapplicability comes into play in the impugned finding on shifting of classification. Therefore, the impugned order fails and is set aside to allow the appeal.

(Order pronounced in the open court on 04/12/2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)