CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 86176 of 2022

(Arising out of Order-in-Appeal No. GOA-CUSTM-APP(VNT)-72-2021-22 dated 18.02.2022 passed by the Commissioner (Appeals), Goa.)

Commissioner of Central Excise and Service Tax, Goa (Appeal) **.... Appellant**
ICE House, EDC Complex,
Panaji, North Goa, Customs House,
Marmagoa, Goa- 403 803.

Versus

Bagadiya Brothers Pvt. Ltd. **....Respondent**
Bagadiya Mansion, Ground Floor,
Jawahar Nagar, Raipur, Chhattisgarh- 492 001.

Appearance:

Shri Krishna Murari Azad, Authorized Representative for the Appellant
Shri R.K. Tomar, Advocate for the Respondent

CORAM:

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

FINAL ORDER NO. A/86053/2025

Date of Hearing: 08.01.2025
Date of Decision: 04.07.2025

Per: S.K. MOHANTY

Brief facts of the case are that the respondents herein had filed a Shipping Bill (S/B) No. 5136758 dated 31.03.2017, before the jurisdictional Customs authorities for export of 56740 MTs of iron ore fines. The said S/B was self-assessed provisionally under Customs Tariff Item (CTI) 2601 1142. The respondents had claimed 'Nil' rate of export duty, by availing the benefit of exemption provided under Notification No.15/2015-Customs dated 01.03.2016. The respondents had declared the Fe grade of iron ore to be 56% of Dry Metric Tonne (DMT) basis. The samples from the exported iron ore fines were drawn as per the ISI specification by the recognized sampler M/s Inspectorate Griffith India Private Limited in the presence of the customs broker/respondents and under customs supervision and the sealed samples were forwarded to the Deputy Chief Chemist (DyCC) Laboratory, Goa. On completion of export transaction, the respondents had submitted the relevant documents including the certificate of weight and quality (test report) issued by M/s Inspectorate Griffith India Private Limited, certifying that the 'Fe content' on dry basis is 56.70% for the purpose of finalization of the S/B. The DyCC in their test report dated 21.06.2017 have also confirmed that the iron content on dry basis is 59%. On the basis of such report issued by DyCC, the S/B was finalized by the department and a demand notice was issued to the respondents informing that the iron ore exported by them is classified under CTI 2601 1143 and the duty @ 30% *ad valorem* is leviable thereon.

1.2 Accordingly, proceedings were initiated by the department for recovery of the short paid duty on the respondents. The assessment order dated 25.11.2020 passed in this regard was appealed against by the respondent before the learned Commissioner (Appeals), CGST & Customs, Goa. The said appeal was disposed of vide the impugned order 18.02.2022, wherein the learned Commissioner (Appeals) has set aside the adjudication order. In support of setting aside the adjudication order dated 25.11.2020, the learned Commissioner (Appeals) has held that re-classification of the goods under CTI 2601 1143 is not sustainable and classification made by the respondents of the exported goods under CTI 2601 1142 is correct. On the basis of such observations, the learned Commissioner (Appeals) has directed the original authority to re-determine the duty liability by considering the classification of the exported goods under CTI 2601 1142. Feeling aggrieved with the impugned order dated 18.02.2022, Revenue has filed the present appeal before the Tribunal.

2. Revenue has assailed the impugned order by way of filing the appeal before the Tribunal on the grounds that the net Fe content of the exported goods would have to be arrived at after deducting the moisture and impurities from the gross weight of the sample; that the judgement delivered by the Hon'ble Supreme Court in the case of *Union of India Vs. Gangadhar Narsingdas Agarwal,* reported in 1997 (89) E.L.T. 19 (S.C.) and the Board's Circular No.4/2012-Customs dated 17.02.2012

were not examined in the impugned order. Revenue's main contention in this appeal is that the learned Commissioner (Appeals) has not taken cognizance of the General Alert Circular No.02 dated 15.04.2019 issued by the Directorate of Revenue Intelligence (DRI). In other words, Revenue's contention in this appeal is that the test report submitted by DyCC on DMT basis should be considered over the WMT basis, as held in the impugned order.

3. Heard both sides and examined the case records.

4. On the basis of test report dated 28.04.2017 furnished by M/s Inspectorate Griffith India Private Limited, confirming iron ore content (Fe) on dry basis as 56.7%, the respondents had classified the exported iron ore under CTI 2601 1142. The department had proceeded against the respondents in changing the classification of the said goods under CTI 2601 1143, on the basis of the test report submitted by the DyCC, Goa as 59%. We find that the learned Commissioner (Appeals) in the impugned order, after taking into consideration the Board's Circular No.04/2012-Customs dated 17.02.2012 has determined the (percentage of) Fe content as per DyCC report on wet basis as below 59%. In arriving at such conclusion, he had given due consideration for deduction of moisture content of 9% from the reported 59% Fe content on dry basis. Therefore, he concluded that the re-classification of the iron ore fines under CTI 2601 1143, which is applicable for iron ore fines having Fe content of 58% or more but less than 60%, is incorrect. In view of the observations made in the impugned order, we are of the opinion that the learned Commissioner (Appeals) has correctly analysed the circular dated 17.02.2012 (supra), which is in conformity with the ratio of the judgement laid down by the Hon'ble Supreme Court in the case of *Gangadhar Narsingdas Agarwal* (supra).

5. Further, we also find that considering the prescribed yardstick for ascertainment of quality of iron ore (Fe content), the Hon'ble High Court of Bombay at Goa in the case of *V. M. Salgaocar and Brother Pvt. Ltd., & Ors.* (Writ Petition No.216 of 2022), vide judgement dated 23.09.2022, has held that the assessments shall be governed by the principles of law in regard to the classification as laid down by the Hon'ble Supreme Court in *Gangadhar Narsingdas Aggarwal* (supra), as clarified by the CBEC in their circular dated 17.02.2012. Since, the

impugned order is in conformity with both the circular dated 17.02.2012 and as per the principle laid down by the Hon'ble Supreme Court in the above case, we are of the considered view that there is no infirmity in the said order passed by the learned Commissioner (Appeals). With regard to the alert circular dated 15.04.2019 issued by the DRI, which was considered as the basis for filing for the present appeal, we find that the same has not been issued in terms of Section 151A of the Customs Act, 1962 and thus, the same cannot be considered as proper and justified instruction for completing the assessment proceedings. In this regard, we find that the Hon'ble High Court of Bombay at Goa, in the case of *Gangadhar Narsingdas Aggarwal* (supra), has held that the assessment is required to be done by the proper officer of customs in compliance to the provisions contained in the Customs statute and while performing such duty, he cannot be carried away by any dictates contained in the General Alert circular issued by DRI, having no statutory backing. Thus, it was held that the said circular dated 15.04.2019 having not been issued under the statute, the same cannot be made the basis for completing the assessment proceedings by the proper officer of customs.

6. In view of the foregoing discussions, we do not find any infirmity in the impugned order, insofar as it has upheld classification of the impugned goods under CTI 2601 1142 and directing the proper officer to re-determine the duty liability under such tariff classification. Therefore, appeal filed by Revenue is dismissed.

(Order pronounced in open court on 04.07.2025)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM