

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA**

Customs Appeal No.76401 of 2016

(Arising out of Order-in-Appeal No.Kol/Cus(Port)/SS/132/2016 dated 13.05.2016 passed by Commissioner (Appeals) of Customs, Kolkata)

M/s Vedanta Ltd.

Sesa Ghor, 20 EDC Complex, Patto, Panaji

Appellant

VERSUS

Commissioner of Customs (Export), Kolkata

15/1, Strand Road, Kolkata-700001

Respondent

Appearance:

Shri Mukesh Laddha, Chartered Accountant for the Appellant

Shri M.P.Toppo, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI SANJIV SRIVASTAVA, TECHNICAL MEMBER

HON'BLE SHRI P.DINESHA, JUDICIAL MEMBER

FINAL ORDER NO.75404/2022

DATE OF E-HEARING : 26.07.2022

DATE OF PRONOUNCEMENT : 28.07.2022

Per P.Dinesha :

This appeal has been filed by the appellant against the impugned Order-in-Appeal No.Kol/Cus(Port)/SS/132/2016 dated 13.05.2016 passed by Commissioner of Customs, Kolkata, whereby the appeal filed by the appellant has been rejected.

2. Heard Shri Mukesh Laddha, Id.Chartered Accountant for the appellant and Shri M.P.Toppo, Id. Departmental Representative.

3. Brief facts leading to the present dispute, which are relevant for our consideration, *inter alia*, are that the appellant had filed 12 Shipping Bills for exportation of Iron Ore Fines and Iron (Fe) content was declared at more than 62% ; that the Revenue assessed to duty at Rs.300/- per MT as was leviable ; that the appellant requested the Adjudicating Authority/Assistant Commissioner for rectification/correction of the error ; that the Deputy Commissioner of Customs (Exports) vide letter dated 04.06.2010 intimated the

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appellant that there was no clerical or arithmetical error in the assessment of the Shipping Bills and hence, the request of the appellant was not covered under Section 154 of the Customs Act, 1962 ; that thereafter, an appeal was filed before the First Appellate Authority, who vide Order-in-Appeal No.Kol/Cus/CKP/285/2010 dated 06.10.2010, set aside the intimation/order of the Deputy Commissioner dated 04.06.2010 and further directed the lower authority to pass a fresh order in accordance with law ; that the Assistant Commissioner having recorded the directions/observations of the First Appellate Authority, however, once again, rejected the request for rectification by upholding that there was no clerical/arithmetical mistake or any accidental slip or omission on the assessing officer ; that thereafter, the appellant preferred an appeal before the First Appellate Authority who vide impugned order, has rejected the appeal of the appellant and hence, the present appeal has been filed before this Forum.

4. We have considered the rival contentions and we have also perused the various orders of the lower authorities as well as the documents placed before us. In the Order-in-Original dated 11.05.2015 passed consequent to the order of the First Appellant Authority dated 06.10.2010, the Assistant Commissioner has recorded the observations of the Commissioner (Appeals) and it is relevant to reproduce the same for the sake of convenience :

"8.

(i).....

(ii).....

(iii) That the Ld. Commissioner of Customs (Appeals) has clearly observed that:-

(a) In terms of the Supreme Court's decision in the case of M/s Gangadhar Narsingdas Agarwal (supra) the Fe content is required to be determined on the basis of the exported weight of Iron Ore Fines which would include the weight of the moisture in it.

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- (b) *The Assessing Office has assessed the duty not on the basis of the gross weight (i.e. including the weight of the moisture) and hereby determined the Fe content but by taking the Fe content on the dry wet basis of the Iron Ore Fines. This is contrary to the ratio of the Supreme Court's decision in the case of Gangadhar Narsindas Agarwal (supra).*
- (c) *Assessment should hus be done by first determining the Fe content as above based on the ratio of Supreme Court's decision and thereafter duty leviabale should be determined.*
- (d) *The Lower Authority did not make any decision whether the issue in question is covered under by error arising from accidental slips and errors arising from accidental omissions.*
- (e) *In terms of the Court and Tribunal's decision, where assessment have not been done properly, the same be rectified by invoking powers under Section 154.*
- (f) *The Assessing Officer was duty bound to correctly apply the law laid down by the Supreme Court and determine the Fe content based on the weight of the Ore exported including the weight of the moisture, all details of which were available in the stuffing bills / supporting documents."*

5. From the above observations of the Commissioner (Appeals), it emerges that the rejection of the rectification application by the Assistant Commissioner was not in order and that the decision of the Hon'ble Apex Court in the case of Union of India Vs. Gangadhar Narsingdas Aggarwal reported in 1997 (89) ELT 19 (S.C.) was to be applied to determine Fe content on the basis of exported weight of Iron Ore Fines, which would include the weight of the moisture in it. The Commissioner (Appeals) had categorically observed that the assessing officer had assessed the duty not on the basis of gross weight (including the weight of the moisture), but had determined the Fe content on dry wet basis. This itself clearly indicates that the order of Assistant Commissioner was not in order and that the same was rectifiable within the meaning of Section 154 *ibid*. In the said Order-in-Original dated 11.05.2015, the Assistant Commissioner has himself

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observed at Paragraph 7 that as per record, the Department did not file any appeal against the said order of the Commissioner (Appeals).

6. The only take-away from the above is that the correct Fe content was required to be determined on the basis of the guidelines contained in the judgement of the Hon'ble Apex Court in the case of Gangadhar Narsingdas Aggarwal (supra). The same having not been done here, in the case on hand, it is clear to us that the order of First Appellate Authority dated 06.10.2010 is correct. It is the settled position of law that not following the order of the Hon'ble High Court or the Hon'ble Apex Court would amount to mistake/error which is rectifiable under the provisions of Section 154 ibid. It is strange that in the second round and in the impugned order, the First Appellate Authority has ignored its own earlier order which has attained finality and thereby sustained a tangential order of lower authority.

7. Further, as claimed by the appellant the provisional assessments have remained as provisional only, which are required to be assessed finally and hence, we are of the clear view that the impugned order has to be set aside with a direction to the lower authority to finalise the assessments adhering to the guidelines of the Hon'ble Apex Court in the case of Gangadhar Narsingdas Aggarwal (supra).

8. In view of the above, the impugned order is set aside and the appeal is allowed by way of remand to the original authority with a direction to pass a speaking order, finalizing the assessments. It is also directed that relief as per Notification No.62/2007-Cus dated 03.05.2007 be given taking into account the test reports ; needless to reiterate that consequential benefits, if any, be given to the appellant, as per law.

(Pronounced in the open Court on **28.07.2022**)

Sd/

(Sanjiv Srivastava)
Member (Technical)

Sd/

(P. Dinesha)
Member (Judicial)

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