ALO Law Office- IDT Tax I Arbitration I Litigation

Date: 31.07.2025

CESTAT Hyderabad Quashes Revaluation and Higher Duty on Iron Ore Exports

In a landmark decision, the Customs, Excise, and Service Tax Appellate Tribunal (CESTAT), Hyderabad, has delivered a judgment that reinforces the principles of fair valuation and classification in export duty cases. The ruling, pronounced on July 28, 2025, in the appeals filed by M/s Atha Mines Pvt Ltd. and M/s Khatau Narbheram & Co., sets a precedent for exporters facing disputes over transaction value and classification of goods.

Background of the Case

The appellants challenged the orders passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Visakhapatnam, which imposed higher Basic Customs Duty (BCD) at 15% on iron ore lumps (more than 10mm) and re-determined the transaction value based on contemporaneous export values. The appellants argued that the Department's rejection of the declared transaction value and artificial segregation of iron ore lumps and fines were unjustified.

Key Issues Addressed

The Tribunal addressed two critical issues:

1. **Legality of Re-determining Transaction Value**: Whether the Department was justified in rejecting the declared transaction value and applying contemporaneous export values.
2. **Classification of Iron Ore**: Whether iron ore lumps in excess of 5% in a composite mixture should attract a higher rate of duty or be treated as iron ore fines.

Legal Principles Upheld

The Tribunal's decision was based on several legal principles:

1. **Transaction Value as the Basis for Valuation**: The Tribunal emphasized that transaction value declared by the exporter should be accepted unless there are substantive grounds to reject it. It relied on Section 14 of the Customs Act and Rule 3(1) of the Export Valuation Rules, which prioritize transaction value as the primary basis for valuation.
2. **No Artificial Segregation of Iron Ore**: The Tribunal ruled that iron ore lumps and fines in a composite mixture should not be artificially segregated for the purpose of levying export duty. It relied on the precedent set in *Daksh Minerals Vs CCT*, which stated that a mixture of iron ore fines and lumps should be treated as iron ore fines for duty purposes.
3. **Contemporaneous Value Application**: The Tribunal found that the Department's reliance on contemporaneous export values was flawed due to non-compliance with Rule 4 of the Export Valuation Rules. Adjustments required under Rule 4(2), such as differences in dates, quantities, and quality, were not properly considered.
4. **Penalty Clause in Contract**: The Tribunal acknowledged the penalty clause in the contract between the appellant and the foreign buyer, which allowed tolerance for iron ore lumps up to 10%. It held that the Department should have accepted this contractual provision.
5. **No Evidence of Additional Consideration**: The Tribunal noted that there was no evidence that the exporter received any amount over and above the declared transaction value. It relied on judgments that affirmed the validity of transaction value when supported by bank realization certificates (BRCs) and commercial invoices.

Final Decision

The Tribunal ruled in favor of the appellants, setting aside the impugned orders. It held that:

- The rate of duty on the entire consignment should be at the rate applicable to iron ore fines, and there cannot be any artificial segregation of iron ore lumps and fines in a composite mixture.
- The Department's application of contemporaneous FOB values for redetermination of export value was flawed and did not comply with statutory provisions.
- Duty should have been demanded only on the amount actually realized by the appellants, as evidenced by the BRCs and commercial invoices.

Implications for Exporters

This judgment is a significant win for exporters, as it reinforces the importance of transaction value and contractual terms in determining export duty. It also highlights the need for the Department to comply with valuation rules and avoid arbitrary re-determination of values. Exporters can now rely on this precedent to challenge unjustified rejections of transaction value and artificial classifications of goods.

Conclusion

The Tribunal's decision is a testament to the importance of fair and transparent practices in customs valuation and classification. By upholding the principles of transaction value and rejecting artificial segregation, the Tribunal has provided much-needed clarity and relief to exporters. This case serves as a reminder that legal recourse can be a powerful tool in ensuring justice and protecting the rights of businesses.

This Article has been written by Shri Ravi Shekhar Jha, Advocate Delhi High Court based on his interpretation of the law. He can be reached at his email id intelconsul@gmail.com or on his Mobile +91-9999005379.

Source: CESTAT Hyderabad

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH - COURT NO. – I

Customs Appeal No. 2608 of 2012

(Arising out of **Order-in-Appeal** No. 33/2012-VCH dated 01.06.2012 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Visakhapatnam)

M/s Atha Mines Pvt Ltd., .. **APPELLANT**
Avani Signature, 6th Floor,
91A/1, Park Street,
Kolkata – 700 016.

VERSUS

Commissioner of Customs Visakhapatnam– CUS .. **RESPONDENT**
4th Floor, Customs House,
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

WITH

Customs Appeal No. 2627 of 2012

(Arising out of **Order-in-Appeal** No. 36/2012-VCH dated 08.06.2012 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Visakhapatnam)

M/s Atha Mines Pvt Ltd., .. **APPELLANT**
Avani Signature, 6th Floor,
91A/1, Park Street,
Kolkata – 700 016.

VERSUS

Commissioner of Customs Visakhapatnam– CUS .. **RESPONDENT**
4th Floor, Customs House,
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

WITH

Customs Appeal No. 2642 of 2012

(Arising out of **Order-in-Appeal** No. 35/2012-VCH dated 08.06.2012 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Visakhapatnam)

M/s Atha Mines Pvt Ltd., .. **APPELLANT**
Avani Signature, 6th Floor,
91A/1, Park Street,
Kolkata – 700 016.

VERSUS

Commissioner of Customs Visakhapatnam– CUS .. **RESPONDENT**
4th Floor, Customs House,
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

AND
Customs Appeal No. 2643 of 2012

(Arising out of **Order-in-Appeal** No. 37/2012-VCH dated 08.06.2012 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Visakhapatnam)

M/s Khatau Narbheram & Co., .. **APPELLANT**
(A unit of Narbheram Vishram),
PO – Barbil, Dist. Keomjhar,
Orissa – 758 035.

VERSUS

Commissioner of Customs Visakhapatnam– CUS .. **RESPONDENT**
4th Floor, Customs House,
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

APPEARANCE:
Shri Narendra Dave & Ms Nandita Reddy, Advocates for the Appellants.
Shri M Anukathir Surya, Authorised Representative for the Respondent.

CORAM: HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30246-30249/2025

Date of Hearing:15.04.2025
Date of Decision:28.07.2025

[ORDER PER: A.K. JYOTISHI]

M/s Atha Mines Ltd., & M/s Khatau Narbheram & Co. (hereinafter referred to as appellant) are in appeal against the order passed by the Commissioner (Appeals). They have filed 4 appeals covering two issues. One issue is whether the Department has rejected and re-determined the transaction value is legal and proper and the second issue is imposition of Basic Customs Duty (BCD) @ 15% on "Iron Ore Lumps (more than 10mm)". In appeal no. C/2608/2012, both the issues are involved, whereas in other appeals, only the issue of charging higher rate of duty on iron ore lump is involved.

2. We find that Commissioner (Appeals) has given marginal relief in so far as allowing them the deduction of the penalty amount from transaction

value on re-determination, but otherwise upheld the application of higher basic customs duty on iron ore lumps in excess of 5% @ 10%. The short question in this appeal is whether the Department is right in enhancing the declared transaction value based on contemporaneous export for the purpose of export duty or otherwise and also whether the Department is right in applying the higher customs duty @ 15% in respect of lumps component of the ore, which has been exported without segregating the same into ores fines and lumps.

3. Learned Advocate for the appellants has submitted that the entire factual matrix is similar to the order passed by this Bench in the case of Daksh Minerals Vs CCT, Guntur-GST [2024 (5) TMI 1155 – CESTAT-Hyd] in so far as segregation of iron ore fine into iron ore lumps and iron ore fine by the Department for the purpose of charging duty. This judgment has already held that there cannot be any artificial segregation of fines and lumps and the question of classification of ore has to be determined in view of the interpretative rule for classification and accordingly even in the context of 15% Iron Ore Lumps, it was held to be classifiable as iron ore fine. In their case, the iron ore lumps are admittedly below 10% and it is also an admitted fact that they had already been allowed the tolerance of 5% by the authorities below and have been charged higher rate of export duty only in relation to iron ore lump in excess thereof. The percentage of lump has been worked out on the basis of the Load Port Test Laboratories. It is also admitted that the assessment was kept provisional.

4. Further, as regards valuation, Advocate is submitting that Department has not been able demonstrate as to why the transaction value declared by therein itself is being rejected, as it is settled law that unless the transaction

value is rejected recourse cannot be taken to valuation rule for determining the assessable value. He places reliance on the judgment of Co-ordinate Bench in the case of CC (Export), Goa Vs VGM Exports [2013 (291) ELT 572 (Tri-Mumbai)]. He has further relied on the following judgments:

i) BTM Exports Vs CC & ST [2017 (11) TMI 1530 (CESTAT-Hyd)]

ii) Eicher Tractors Ltd., Vs CC [2000 (122) ELT 321 (SC)]

iii) Devika Trading Pvt Ltd., Cs CC [2004 (167) ELT (Tri-Mum)]

iv) Essel Mining & Industries Vs CCT vide Final Order No. A/30358/2023 dated 24.08.2023

5. On the other hand, Learned AR points out that in this case, based on the test reports, it was held that certain percentage of declared iron ore fine are in the form of lump and would therefore attract higher rate of duty. He has also submitted that there was contemporaneous export, which showed that the value declared by them was not correct and that is why the value has been re-determined as per Valuation Rules. He has further relied on certain judgments, as under, to support the order of the Commissioner (A).

i) Prime Mineral Exports Pvt ltd., Vs Commissioner of Customs, Central Excise & Service Tax [2015 (8) TMI 730 – Bombay High Court]

ii) M/s Welspun Corp. Ltd., Vs Commissioner of Customs [2018 (12) TMI 173 – CESTAT, Ahmedabad]

iii) Obulapuram Mining Company Pvt ltd., Vs CCCE & ST, Guntur [2018 (10) TMI 223 – CESTAT, Hyderabad]

iv) M/s Sesa Goa Ltd., Vs Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-I [2014 (4) TMI 658 – CESTAT, Kolkata]

6. Learned Advocate, further submits that as is apparent from the order whereby the export shipping bills were finalised, at para 9 of the order, they

have merely referred to certain export values in respect of certain exporters without examining their contract, terms and conditions, commercial volume of export, country of import, port of export etc. Therefore, on that count also the contemporaneous value could not have been taken for determining the value. Learned Advocate further states that even for re-determination of value, there is no compliance with the Rule 4 of Export Valuation Rules as nothing is on record that they have actually complied with all the provisions, including adjustment required, before they have applied the said value for determining export duty. Order-in-Original at para 39 made all calculations of re-determined assessable value irrespective of whether it is consistent with Rule 4 or otherwise.

7. There is no dispute, as regards the value declared at the time of export, which was provisionally assessed and the realisation thereof, which in fact is less than the value declared though the duty has been discharged on full declared value. Thus, the issue would be whether transaction value when there is no substantive grounds to discard, has to be taken for valuation purpose at the time of re-determining the export value or otherwise.

8. Heard both the sides and perused the records. Since the issue is similar in all the four appeals they are being taken up together for disposal.

9. In this case, admittedly, there is a presence of iron ore lump in the iron ore fines exported. The stand of the Department is that the iron ore lump, beyond the tolerance limit of 5%, has to be classified differently than iron ore fine. Further, in view of the contemporaneous value of similar Fe content, being subsequently more, value has to be re-determined. It is to be noted that iron ore lump (more than 10 mm) attracts basic customs duty

@ 10%. We also note that the FOB value in respect of shipping bills covered in all these appeals were substantially altered.

10. We find that in this case, prices were determined based on the negotiation between the appellants and the foreign buyers in terms of sale agreement. We also note that in the following cases, the transaction value mentioned in the Bill of Entries cannot be discarded without any substantial basis and it can be discarded only when import of identical goods or similar goods at a higher price at around the same time is proved by the Department. Reliance is placed on the following judgments:

i) Eicher Tractors Ltd., Vs CC [2000 (122) ELT 321 (SC)]

ii) BTM Exports Vs CC & ST [2017 (11) TMI 1530 (CESTAT-Hyd)]

iii) Devika Trading Pvt Ltd., Vs CC [2004 (167) ELT (Tri-Mum)]

11. Moreover, we also find force in the contention of the appellant that merely because export of identical or similar goods were at a slightly higher price by other customers, the value declared by the appellant would not be liable for re-determination in terms of the judgment in the case of Devika Trading Pvt Ltd., supra. We also find that there is no evidence on record or alleged by the Department that the appellant had received consideration more than what has been declared in the invoice or that the appellant in the overseas buyers are related parties. It is also on record that the appellant realised the amount from the buyers as per the BRC and on the said value has discharged duty. The reliance placed by the appellant in the case of Essel Mining Vs CCT, Final Order No. 30358/2023 dated 24.08.2023 and CC (Export), Goa Vs VGM Exports [2013 (291) ELT 572 (Tri-Mum)] are relevant in this case. The bonafide of BRCs were not denied and therefore once the BRC has been accepted as the amount actually received by the appellant for

said exports, the same has to be accepted as declared value in terms of Section 14 of the Customs Act, read with Rule 3(1) of the Valuation Rules. In so far as, applying the contemporaneous export value, we find that Department has redetermined the price at a rate of US$ 117 by relying on shipping bill in respect of one exporter namely Sri Sainath, where the unit price declared was ranging from US$ 115 to 119 in respect of Iron Ore containing 58% Fe content. We find that these are the shipping bills filed on 10.01.2011 and 12.11.2010 whereas the shipping bills filed by the appellant have been filed on 21.09.2010.

12. Rule 4(1) of the Export Valuation Rules requires that the value of the goods for the purpose of charging export duty shall be based on transaction value of goods like kind and quality exported at or about the same time to other buyers to the same destination country of importation or in its absence any other destination country of importation adjusted in accordance with the provisions of sub-rule(2). Further, Rule 4(2) also provides various reasonable adjustments that the proper officer shall make, taking into consideration relevant factors such as difference in the dates of exportation, commercial values, quantity levels, difference in composition, quality, design, etc.

13. We find from the impugned order that it does not mention quantity of goods exported in respect of shipping bills relied upon for the purpose of contemporaneous prices and therefore the submission of the appellant that in the case of export of small quantity, the prices are likely to be higher in comparison with bulk export. Further, there is no information on record about the destination of exports nor any documentary evidence exists that the original declared transaction value was rejected and the value was re-

determined based on contemporaneous export of the same grade and that same redeemed value has now been applied in the present case. We also find force in the contention that the price of iron ore may vary based on quality of the goods, requirement of the buyers, contents of other elements such as Sulphur, Phosphorous, Silica and Aluminia etc. We do not find that the Department has examined these aspects before applying the contemporaneous value.

14. We also find that there cannot be any justification for charging higher rate of duty on iron ore lump in excess of 5% in each consignment when admittedly they were part of the same bulk iron ore which was predominantly iron ore fine. We note that the lump contents are varying from 9.26% to 10.38%.

15. We find that the similar issue was for consideration before the Tribunal in the case of Daksh Minerals Vs CCT [2024 (5) TMI 1155 (CESTAT-Hyd)] wherein, it was held that consignment of iron ore fine having certain percentage of iron ore lumps also has to be treated as iron ore fines only and cannot be artificially segregated into iron ore fines and lumps for the purpose of levying export duty. The relevant para is cited below for ease of reference:

> "6. Therefore, in the facts of the case, the entire consignment of mixture having certain percentage of Iron Ore lumps has to be treated as Iron Ore fines only and cannot be artificially segregated into Iron Ore fines and lumps for the purpose of levying of export duty. Therefore, the demand confirmed and upheld by the Commissioner (Appeals) is not sustainable on this ground. In so far as re-determination of value is concerned, while the department has argued that exporter has not contested the same, the learned Advocate has contested that lower authorities have disregarded the transaction value or the price of Iron Ore exported as is evident from the invoices and corroborated by bank realization certificate dt.07.02.2011. They have also relied on certain Board Circulars viz., No. 18/2008-CUS dt.11.10.2008 and No. 37/2007 dt.09.10.2007, which have clarified that transaction value is the primary basis for valuation of export goods and the method specified under Rule 3 will be applicable. Only in the case where transaction value is not accepted, the valuation of export goods shall be done by

> application of Rule 4 to Rule 6. They have also relied on the judgment in the case of CC (Exports), Goa vs VGM Exports [2013 (291) ELT 572 (Tri-Mum)], wherein it has been held that the price realized by them as per final invoice and as per bank realization certificate and that it is the transaction value on which duty liability has to be discharged. We find that there is no sufficient ground for rejecting the transaction value. It is an admitted position that the price negotiated is based on certain parameters like moisture content, Fe content, etc., at the end of buyer's port and therefore, the final invoice may be higher or lower as compared to the provisional invoice. Based on the confirmed parameter verified at the receiver's port, final invoice has been raised for the consignments in question and the same amount has been realized as confirmed by BRC and accordingly, the transaction value has to be accepted in the instant case. Therefore, on this count also, there is no ground for rejecting the transaction value as also for demanding additional duty on this account."

16. We also take note of the fact that in terms of the contract between appellant and the foreign buyer there was a penalty clause for having iron ore lump (iron ore above 10mm) in excess of 10% and the penalty has also been imposed and the same was deducted from the consideration. Therefore, when the contract itself provided for tolerance waiver upto 10% there is no reason for Department not to accept the same.

17. Therefore, we find that in the present case, in view of the judgment cited supra, the rate of duty on the entire consignment is required to be at the rate at which the iron ore fines were subjected to export duty and there cannot be any artificial segregation of iron ore lump and iron ore fine in a composite mixture for the purpose of levying export duty. Further, in so far as the application of the contemporaneous FOB value for the re-determination of the export FOB, we find that it suffers from various infirmities in terms of statutory provisions cited supra, as also the fact that there is no allegation that the exporter has received any amount over and above than what has been realised by them in terms of BRC and the commercial invoices and therefore the duty should have been demanded only in terms of the amount actually realised. We note that there is no evidence that they have received anything extra over and above the amount

realised and admittedly the correct duty had been discharged on said value except to the extent of applying high rate of duty for certain amount of iron ore lump, which we have already said is not correct.

18. In so far as reliance placed by the Department on certain case laws including by Hon'ble High Court of Bombay, we find that facts are distinguishable in as much as the ores were declared as ROM ore containing 60% fines and 40% lump, which is not the case here. Further, the Hon'ble High Court was not deciding the issue of classification of ore as a mixture as per interpretative rules. Further, reliance placed by the Department on Section 19 is also not correct as the same is applicable to goods consists of a set of articles and not mixture.

19. Therefore, in view of the fact, the impugned order is set aside to the extent appealed against by the appellant.

(Order Pronounced in open court on 28.07.2025)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

Jaya