CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

REGIONAL BENCH – COURT NO. I

Customs Appeal No. 40807 of 2013

(Arising out of Order-in-Original No.19992/2012, dated 27.12.2012 passed by the Commissioner of Customs, Custom House, Chennai 600 001)

M/s. Bharat Mines and Minerals **.....Appellant**
Singhi Sadan, Infantry Road
Cantonment, Bellary 583 104
Andhra Pradesh

Versus

Commissioner of Customs **...Respondent**
(Seaport-Export)
Custom House
No.60, Rajaji Salai, Chennai 600 001

AND

Customs Appeal No. 42798 of 2014

(Arising out of Order-in-Appeal C.Cus.No.1843/2014, dated 26.09.2014 passed by the Commissioner of Customs, Custom House, Chennai 600 001)

M/s. V S Lad & Sons **.....Appellant**
Sandur 583 119
Bellary District
Andhra Pradesh

Versus

Commissioner of Customs **...Respondent**
(Export)
Custom House
No.60, Rajaji Salai, Chennai 600 001

APPEARANCE:

Mr.B.G. Chidananda Urs, Advocate for the Appellant
Ms. Anandalakshmi Ganeshram, Authorised Representative for the Respondent

CORAM :

HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V, MEMBER (JUDICIAL)

FINAL ORDER Nos.41176-41177/2025

DATE OF HEARING: 07.07.2025
DATE OF DECISION:28.10.2025

Per Ajayan T.V.

These two appeals having a common issue were heard analogously and are being disposed of by this common order. The relevant facts are that the appellants herein are partnership firms engaged in the business of mining and export of iron ore. The relevant period is prior to the introduction of self-assessment. Pursuant to a DRI investigation, the department being of the view that the appellants had realised higher value than the value on which the exporter had paid export duty on the iron ore exported, issued show cause notices invoking the extended period of limitation under Section 28(4) of the Customs Act, proposing to redetermine the value in respect of those transactions where the appellants / exporters had received excess amount than the value declared at the time of exportation for assessment of duty and demand the differential duty, and proposing to confiscate the quantum of iron ore exported. The Notice also contained proposals to demand interest and impose penalties. In respect of the appellant M/s Bharat Mines and Minerals, there was an additional issue of demand of differential customs duty based on the change in rate of tax, vide Notification no.79/2008-cus. dated 13.06.2008. After due process of law, the demands were confirmed and penalties were imposed by the respective adjudicating authorities as detailed in the respective Orders in Original. The appeal preferred by the appellant VS Lad and Sons before the First Appellate Authority didn't succeed and the Appellate Authority upheld the Order in Original. Aggrieved by the impugned orders, having preferred these appeals, the appellants are before this Tribunal.

2. Shri B. G. Chidananda Urs, Advocate, appeared on behalf of both the appellants and submitted as under:

a) Appellants are in the business of extraction and exporting of iron ore. In fact, the appellant Bharat mines and minerals were exporting ore from 2004 onwards under the same/similar contracts. The appellants exported the iron ore from various ports, viz., New Mangalore, Chennai, Kakinada, Visakhapatnam and Krishnapatanam Ports.

b) The contract is the primary document on the basis of which the exports were undertaken and that the parties had also agreed that the base supply price of iron ore fines was fixed per Dry Metric Tonne (DMT) quantity on FOB (Free on Board) basis at the load port and the price was to be adjusted based on the actual content of FE depending on the presence of other elements like phosphorous, surplus, silica and alumina. The appellants arrived at the value of the export goods based on the method adopted by all the exporters of the iron ore over the years which would be that the FOB value is computed on the basis of DMT quantity arrived at by deducting the permissible moisture content from the WMT. The gross value is arrived at applying the unit price on the DMT quantity and the invoices are all issued as 'provisional invoice'. All these documents were produced along with shipping bill at the time of assessment. The appellant had effected numerous exports and it was only in respect of few such shipments that the said allegation and demand of differential duty has been raised.

c) The self-assessment mechanism was first provided in the statue by amending Section 17 of the Act only by Finance Act 2011 with effect from 08.04.2011. All these exports had happened prior to the said date of introduction of self-assessment. There was no mis-representation by the appellant and the appellant had disclosed the contract on the basis of which exports are undertaken as well as the provisional invoice with the shipping bill for assessment. It was for the proper officer to have called for any document for the purposes of any enquiry, if it was felt necessary. The industry practice is known to the department and when all information relevant for computing duty was made available, it is the sole prerogative of the proper officer to assess the duty either provisionally or conclude the assessment.

d) That in fact the Customs House, Chennai had informed the investigating agency with respect to the exports made by the appellant M/s. Bharat Mines and Minerals that all the shipments of iron ore were cleared on final assessment basis and there is no shipping bills pertaining to the said appellant pending finalisation.

e) Without prejudice, the charge against the appellant was that the moisture deducted was more than the moisture certified by the

assayer at the discharge port which has resulted in less quantity of DMT and that the appellant has suppressed the existence of the document like certificate issued by assayer at the discharge part, commercial invoice raised after shipment of goods to overseas buyer for realisation of export proceeds etc. That the valuation of export goods are to be undertaken at the time and place of exportation and the events that happened after exports were effected will not affect the assessment of export goods. Reliance is placed on the decision of Hon'ble Tribunal in Hira Steel Ltd. Vs. CCE, 2016 (343) ELT 1058 (Tribunal Mumbai) affirmed by Hon'ble Supreme Court in Hira Steel Ltd. Vs. Commissioner, 2018 (361) ELT A (283) (SC). It was for the proper officer to arrive at the value on which export duty is applicable on presentation of the goods for exportation and when all the basic facts were disclosed to the proper officer, the question of disclosing inferential facts cannot be alleged. Reliance is placed on the decision in Calcutta Discount Co. Vs. ITO AIR, 1961 SC 372 in this regard.

f) That the present proceedings have been initiated without challenging the assessment of the shipping bills which had been finalised and this would be opposed to the decision of the Hon'ble Supreme Court in the case of ITC Vs. CCE, 2019 (368) ELT 216 (SC).

g) That there was no clarity on the procedure to be adopted for computation of customs duty as is evident from the circular No.4/2012-Cus. dated 17.02.2012 issued in F.No.415/93/2011 – Cus. IV.

h) That as regards the issue of demand of differential customs duty based on Notification No.79/2018 Cus. dated 13.06.2008, the basis of demand was that the export orders was given on 09.06.2008 and the order permitting loading of the goods for exportation was given on 15.06.2008 that the loading activity to place after the change in rate of duty and hence 15.06.2008 became the relevant date in respect of the shipping bill no.3048525 dated 07.06.2008.

i) That the issue is no longer *res integra* based on a catena of the decisions of the Hon'ble Supreme Court and High Courts and reliance is placed on the decisions in ***Union of India v. Asian Food Industries, 2006 (204) ELT 8 (SC); Prime Mineral Exports Private Ltd. v. UOI., 2010 (257) ELT 414 (Bom);***

Commissioner v. Kashvi Power and Steel (P) Ltd., 2018 (364) ELT 332 (T); Narayan Bandekar & Sons Pvt Ltd. v. Commissioner, 2010 (259) ELT 362 (Bom); Commissioner V. R.M.K.S. Mineral Exports (P) Ltd., 2024 (387) ELT 733 (Tri-Bang.) and Minera Steel and Power Pvt. Ltd. v. CC (Seaport – Export)., 2019 (370) ELT 621 (Tri. Chennai).

3. Ms. Anandalakshmi Ganeshram, Authorised Representative appeared on behalf of the Respondent reiterated the findings in the impugned order in appeal and filed the parawise comments of the Revenue in this regard. Ld.A.R. submitted that the appeals are to be dismissed.

4. Heard both sides. Carefully perused the appeal records as well as the decisions submitted as relied upon.

5. The issues that arise for our determination are :
(i) Whether the redetermination of the value in respect of those transactions where the appellants had received excess amount than the value declared at the time of exportation for assessment of duty, and resultant demands of the differential duty invoking extended period of limitation along with interest, and consequential liability of the exported goods to confiscation and imposition of penalties, are tenable.
(ii) Whether the demand of differential customs duty based on the change in rate of tax, vide Notification No.79/2008-cus. dated 13.06.2008, is tenable.

6. Concededly, the period involved in the present disputes are prior to April 2011. Given that Self-assessment was introduced in Section 17 of the Customs Act, 1962, with effect from April 8, 2011, through changes made in the Finance Act, 2011, it is elementary that the amended provisions cannot be pressed into action in relation to transactions prior to coming in force thereof, unless the amending Act clearly provides the applicability of such amended provisions to operate retrospectively or by necessary implications. There is nothing coming forth from the Act that indicates such retrospective application. In the absence of any such mandate discernible in the Act, we are unable to perceive the law to be operative retrospectively

and it can but only operate prospectively, that is, from the date with effect from which it came into force.

7. Having determined that it is the provisions of Section 17 of the Act as it stood during the relevant period which prevails and ought to be considered, the said section as was prevailing then, is reproduced below:

"17. Assessment of duty.-(1) After an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 the imported goods or the export goods, as the case maybe, or such part thereof as may be necessary may, without undue delay, be examined and tested by the proper officer.

(2) After such examination and testing, the duty, if any, leviable on such goods shall, save as otherwise provided in section 85 be assessed.

(3) For the purpose of assessing duty under sub-section(2), the proper officer may require the importer , exporter or any other person to produce any contract, broker's note, policy of insurance, catalogue or other document whereby the duty leviable on the imported goods or export goods as the case maybe, can be ascertained and to furnish any information required for such ascertainment which is in his power to produce or furnish, and thereupon the importer, exporter or such other person shall produce such documents and furnish such information.

(4) Notwithstanding anything contained in this section, imported goods or export goods may, prior to the examination or testing thereof, be permitted by the proper officer to be assessed to duty on the basis of the statements made in the entry relating thereto and the documents produced and the information furnished under sub-section (3); but if it is found subsequently on examination or testing of the goods or otherwise that any statement in such entry or document or any information so furnished is not true in respect of any matter relevant to the assessment the goods may, without prejudice to any other action which may be taken under this Act, be re-assessed to duty.

(5) where any assessment done under sub-section 2 is contrary to the claim of the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification, therefore, under this Act, in cases other than those where the importer or the exporter, as the case may be, confirms his acceptance of the said assessment in writing, the proper officer shall pass a speaking order within fifteen days from the date of assessment of the bill of entry or the shipping bill, as the case may be."

8. It can thus be seen that in the old regime, once an importer or exporter had entered any goods under Section 46 or 50 of the Act respectively, the said goods were required to be examined and tested by the Proper Officer without undue delay under sub-section (1). Based on such examination and testing, the duty, if any, leviable on such goods, would be assessed by the Proper Officer, save as otherwise provided under Section 85 of the Act. Further, the proper Officer, in carrying out the exercise of assessing duty was empowered under sub-section (3) of Section 17 of the Act to require the importer or exporter or any other person to produce such documents and/or information, as stipulated therein. Again, under sub-section (4) of Section 17, the proper Officer was, *inter alia,* authorised to re-assess duty, if he found, on examination or testing, the goods or otherwise, that any statement made, while entering goods for clearance, or, in the document, or, information so furnished was not true in respect of any matter relevant to the assessment of the goods. Under sub-section (5) of Section 17, if, the importer or the exporter were to accept the re-assessment made, which was contrary to the assessment made by the importer or the exporter, and confirms such acceptance of reassessment in writing, then, that would be the end of the matter. However, if, the importer or the exporter does not accept such reassessment and contests/disputes the same, then it was incumbent upon the proper Officer to pass a speaking order within fifteen days from the date of assessment of the BE, or the shipping bill, as the case may be.

9. Therefore, we are of the considered view that under the old regime which was prevalent during the relevant period in this case, it was incumbent on the proper Officer to verify, examine and test as may be necessary, to require the exporter to produce such documents and/or information as was deemed fit, and thereafter, re-assess the duty leviable before the goods could be cleared for export. We find from the comments of the Revenue as submitted by the Ld.A.R. that the Department has not controverted the appellant’s assertion of having placed the contract before the proper officer for examination and completion of assessment of the shipping bill and admittedly the

subject shipping bills were finally assessed by the proper officer. Such being the conceded position, we find merits in the appellant's contention that it was for the proper officer to arrive at the value on which export duty is applicable on presentation of the goods for exportation and when all the basic facts were disclosed to the proper officer, the question of disclosing inferential facts cannot be alleged. Reliance placed on the decision in ***Calcutta Discount Co. Vs. ITO AIR, 1961 SC 372*** in this regard is apposite. We also notice that the Department has not controverted the appellant's contention that once such assessment is complete the challenge to such assessment has to be by way of an appeal. In this regard, the reliance placed by the appellant on the decision in ***ITC Vs. CCE, 2019 (368) ELT 216 (SC)*** is also appropriate.

10. Indisputably, in so far as the export of Iron Ore is concerned, it is a known fact that the rates of duty and exemptions and whether the duty was on ad valorem or specific basis varied from time to time, but there was always a question of determination of Fe content. For the relevant period, from the notifications submitted by the appellant it is seen that the variation was only in the ad valorem rate to be applied. We find from the comments of the Revenue as submitted by the Ld.A.R. that the Department has conceded that the shipping bills were assessed based on the quantity, value and declarations furnished and that as per available records, no samples were drawn for testing before let export order was issued.

11. That apart, it is seen that the Central Board of Excise & Customs, vide Circular No. 4/2012-Cus., dated 17-2-2012, in the wake of several references received, inter alia,

clarified as under :-

> "2. Hon'ble Supreme Court in the matter of Civil Appeal No. 7539 of 1995 in case of Union of India v. Gangadhar Narsingdas Aggarwal [1997 (89) E.L.T. 19 (S.C.)] in order to arrive at the Iron (Fe) contents out of Iron Ore, had held that-
>
> 'that is because the duty is relatable to weight and therefore, once the iron content is determined keeping in mind the total weight, the percentage can be determined separating the iron contents from the rest of the impurities inclusive of moisture and thereafter

ascertain in which category the lumpy iron would fall for the purpose of charging duty….'

3. In light of the observation by the Apex Court that export duty is chargeable according to Fe contents, and to maintain uniformity all over the customs houses, it is clarified that for the purpose of charging of export duty the assessment of Iron ore for determination of Fe contents shall be made on Wet Metric Ton (WMT) basis which in other words mean deducting the weight of impurities (inclusive of moisture) out of the total weight/Gross Weight to arrive at Net Fe contents.

4.In case of any difficulty in arriving at the net Fe content, assessment may be based on test result which directly determines the Fe contents.

5.Pending assessments on the issue, if any, should be finalized accordingly."

12. Indisputably, despite the Apex Court decision in Hon'ble Supreme Court in the matter of Civil Appeal No. 7539 of 1995 in case of Union of India v. Gangadhar Narsingdas Aggarwal [1997 (89) E.L.T. 19 (S.C.)], divergent practices for calculation of iron contents from Iron Ore were being followed at different Ports for charging Export duty, the two types of calculation methods adopted being, one on the basis of Wet Metric Ton (WMT) and the other on the basis of Dry Metric Ton (DMT), resulting in the aforesaid Circular being issued by the Board to ensure uniform practice.

13. We find that the issue of whether the determination of Fe contents of Iron Ore being exported ought to be made on Wet Metric Ton (WMT) basis or on Dry Metric Ton (DMT) basis, for the purposes of charging export duty, had come up for consideration of the Honourable Bombay High Court in the case of ***V.M.Salagocar and Brothers Pvt Ltd v Assistant Commissioner of Customs (Export), (2023) 11 Centax 215 (Bom) (Salgocar case in short)***. The Lordships were considering a writ petition challenging the legality of the General Alert Circular no. 02/2019 dated 12/15th April 2019 (for short, 'GA Circular'), issued by the Directorate of Revenue Intelligence (DRI) and two orders-in-original dated 17-3-2022 and 31-3-2022, passed by the Assistant Commissioner of Customs. The petition concerned with three shipping bills of March 2018 followed by two provisional

shipping bills of June 2020 relating to export of iron ore, which were filed by the petitioners under CTH No. 2601 11 21 and CTH 2601 11 22 (iron ore lumps) and CTH 2601 11 41 (iron ore fines) undertaken by the petitioners from the Mormugao Port, seeking benefit of "Nil", rate of export duty, under an exemption notification dated 1-3-2011. In regard to the said exports of the petitioners, the Revenue issued letters for finalization of assessment under Section 18 (2) of the Customs Act between May 2021 to December 2021, seeking to deny classification claimed by the petitioners on the "Wet Metric Ton" (WMT) basis and to recover export duty at the rate of 30% as prescribed under the Second Schedule to the Tariff Act. The petitioners contended that in passing the impugned orders-in-original, the Assessing Authority has been guided by the GA Circular which, according to the petitioners is illegal and could not be taken into consideration by the Assessing Officer to pass the impugned orders-in-original to levy customs duty on the export of iron ore as undertaken by the petitioners. The Hon’ble High Court found that the dispute which has arisen in the said proceedings was in regard to the method by which the iron (Fe) content in the iron ore is required to be determined for the purposes of levy of duty on the petitioners' export under the bills in question and noted that the petitioners intended to take recourse to the WMT wet method to be the only method to determine the iron ore content, relying on the decision of the Supreme Court in Gangadhar Agarwal's case. On the other hand, the Revenue had contended that the Fe content would be required to be determined only by the "dry"/DMT method as the duty is required to be levied on ad valorem basis.

14. We find that in the course of examining the rival contentions, the Hon’ble High Court has extensively analysed the entire gamut of levy of export duty on iron ores, right from its genesis in Gangadhar Agarwal’s case pertaining to the exports made between August 1970 and December 1972, detailing the facts of the said case through its journey before the single bench and subsequently the Division Bench of the Bombay High Court, till its culmination in the Supreme Court decision in *Union of India v. Gangadhar Narsingdas Agarwal 1997 (10) SCC 305*.

15. We derive benefit from the illuminative and educative discussions and conclusions of the Lordships of Bombay High Court in Salgocar Case, the relevant portions of which are reproduced below:

" 42. It is thus clear that the Supreme Court in affirming the view of the learned Single Judge as also the learned Division Bench in the case of Gangadhar Agarwal (supra) has approved the WMT method considering the fact that the goods (iron ore) is required to be considered in its natural form at the time of its export which contain the moisture and other impurities. **The following are the principles which can be culled out from the said three judgments in Gangadhar Agarwal's case in regard to the classification of the Fe (iron) content in the iron ore for the purpose of levy export duty:-**

(i) The iron ore when subjected to export, is exported in its natural condition so as to include impurities and moisture.

(ii) It is not in dispute that there is no method or formula to determine the iron contents while the goods are in moist condition. The percentage of iron content in the iron ore is calculated by adopting a certain formula such formula has no scientific backing and the formula is based on approximate conclusion. Such formula is recognized not only in our country but also universally.

(iii) It is a recognized practice to determine iron content in the goods (iron ore) in moist condition on an appropriate basis by finding out the iron content in dry sample analysis. What is relevant is the condition in which iron ore is presented to the customs authorities for export namely, the condition of the goods on the date of the export. If the condition of the goods on the date of the export is such, that it contains impurities and moisture and that it is not purely only iron ore then, in that regard, the universally applied formula would become applicable to determine the percentage of iron ore in the condition of the goods on the date of the export.

(iv) The Government having accepted one principle in holding the exporter to the condition of the goods on the date of the export, a different principle cannot be adopted while determining the customs duty. Thus, if the weighment of the exportable goods is made while it is in moist condition, then it cannot be accepted that the iron content cannot be determined while the goods are in moist condition.

(v) It is not correct for the Revenue to take a position that as it is not possible by a physical analysis to determine the iron ore content in moist lumpy iron ore or moist iron ore fines, because moist iron ore fines and moist iron ore has to be dried for finding out the iron contents to be determined by the method of analysis extended by the Indian Standard Institute and the result of such analysis, by applying such method must be made applicable directly or straight away to determine the iron content in the iron ore being exported, as it is not the practice that lumpy iron ore and moist iron ore fines are dried for the purpose of determining the iron contents.

(vi) Although it is true that there is a mathematical formula by which on the basis of the result of such analysis, the iron content in moist lumpy iron ore and moist iron ore fines, can be easily determined. Such formula is being regularly applied by the expert laboratories not only in India but also other countries. A certificate issued by such laboratories in regard to the iron content in the moist iron ore and moist lumpy iron ore being exported, indicating the percentage of the iron content in the goods subject matter of export, needs to be accepted.

(vii) Merely because in respect of moist iron ore, iron content cannot be determined directly by physical analysis, this cannot lead to a result that the iron ore content cannot be determined at all or that the assessee should be deprived of its just claim on such footing.

(viii) It is immaterial what method one adopts for the purpose of separating the iron content from the lumpy iron ore but the percentage has to be determined from the total weight which was available at the given point of time "after the iron content is determined." This is because the duty is relatable to weight and therefore once the iron content is determined, keeping in mind the total weight, the percentage of iron ore can be determined separating the iron content from rest of the impurities inclusive of moisture and thereafter to be ascertained in which category the lumpy iron ore would fall for the purpose of charging duty under the Tariff items/notification.

(ix) The percentage of iron ore content is determined after ignoring the moisture, the percentage would not be relatable to the lumpy iron ore weighed at the relevant time for the purpose of charging duty.

43. Having noted the above principles as culled out from the said three decisions in Gangadhar Agarwal's case, we need to consider whether there is any deviation or modification in the nature the iron ore under the Tariff Act and the Schedules read thereunder as they presently stand. Mr. Shah has submitted that the only change which is effected from the year 2008 is in the rate of the duty, which earlier being at the per ton basis is now changed to ad valorem and not the classification.

44. **In our opinion, the petitioners in the present context are correct in contending that in the process of determination of the appropriate rate of export duty on iron ore, it entails a determination of three issues, firstly, the classification of the iron ore under the Second Schedule of the Tariff Act to be undertaken based on the scheme of classification namely the headings and sub headings under the First Schedule to the Tariff Act, secondly, the classification under the First Schedule would enable determination of the appropriate sub headings of classification, which is based on the percentage of Fe (iron) content in the iron ore. This is the stage where the Wet method would be required to be adopted; thirdly, based on the appropriate classification (headings or sub headings), the appropriate prescribed basis of levy under the Second Schedule to the Tariff Act is required to be determined; and fourthly, it would be required to be examined whether there is applicable exemption notification related to either description of the goods and/or the classification (headings or sub headings) of the goods as regards the levy of export duty on the export of iron ore.**

45. It appears to be not in dispute that during the period prior to 13 June 2008, the prescribed rate of levy was Rs. 300/- per ton and post 13 June 2008, the prescribed rate of levy was 20% ad valorem, which was modified to 30% ad valorem.

46. We, therefore, find much substance in the contention as urged on behalf of the petitioners that the Fe (iron) content of the iron ore was required to be determined at the second stage as noted above, to be undertaken on the basis the iron ore as it naturally stood at the time of export, namely, on the Wet method as in such condition the iron ore would contain moisture and other impurities.

47. Thus, it needs to be stated that the iron ore being exported is not iron ore in its pure form, which can be determined only by applying the dry method i.e. when the lumpy iron ore is dried at a temperature of 105^0C to 110^0C, and by such process, the impurities/moisture are weeded out. This can happen only in a laboratory, on a sample of iron ore being submitted for such analysis. Thus, when the iron ore is dried in the laboratory, it is certainly not in the natural form, that is containing moisture and other impurities. It is in these circumstances, a well established method of determining the percentage of Fe (iron) content, when the iron ore is in such original (natural) condition, namely, containing moisture and other impurities, by applying the wet (WMT) method, the percentage of iron content is determined essentially for the purposes of sale and purchase. It is for such purposes, for determination of the iron content in relation to the export of iron ore, a mathematical formula being universally recognized is being followed for determination of the iron content in the natural lumpy iron ore or the iron fines. Thus, it appears that there was never a confusion in determining the iron content by two different standards, firstly, a standard whereunder by applying the wet (WMT) method the iron content in the iron ore for the purpose of classification of the iron ore for levy of export duty being adopted; and secondly, an analysis of the iron content in the iron ore for the purpose of trade and commerce by applying the dry method, which is recognized for the purposes of trade on the basis of which invoicing would take place between the parties. It is for such reason, it is not correct for the Revenue to contend that the dry method which is being used for the purpose of trade and commerce be made applicable for the purpose of determination of its classification for the purposes of levy of export duty on export of raw iron ore in its natural form. Such hypothesis insofar as tariff entries are concerned, appears to be totally unacceptable as recognized by Supreme Court in its decision in Gangadhar Agarwal's case. In any case, there cannot be any confusion that the iron ore of which the iron content is determined in the laboratory as reflected in the certificate issued by the laboratory is not the form of the actual iron ore being exported. The export of the iron ore is in a natural form containing moisture and impurities.

48. **The respondents thus could not have discarded the wet (WMT) method purporting to co-relate the same to the rate of levy namely, the tariff rate being changed which earlier was on a per ton basis to the ad valorem basis. On a comparison of the tariff headings as it stood earlier and at present which we have already**

noted above, there is no change whatsoever in the "description of the goods" except for a minor variation in the percentage of iron ore (Fe) classified in different categories. What has undergone a change is only the rate of the duty which, when the Courts decided in Gangadhar Agarwal's case, it was at a rate per ton basis and which has now been changed to an ad valorem duty. Except for such change, not only the classification but the basis of classification as appearing in the different headings and sub-headings appears to have remained the same. There is also no material placed on record by the Revenue to the effect that what was accepted to be an established practice in Gangadhar Agarwal's case, till the assessment in question was being undertaken in any lawful manner was discarded even between the period from June 2008 to April 2022. We thus find much force in the contention of Mr. Shah that even after the new regime of the rate of tariff was modified to ad valorem basis w.e.f. 13 June 2008, there is no denial that the department was consistently following the basis of determination of the Fe (iron) content by the Wet (WMT) method as recognized and approved by the Supreme Court in Gangadhar Agarwal's case.

49. Moreover, we find that there is a reason for the Revenue to do so inasmuch as when the legislature has found it appropriate that the goods are required to be classified on dry weight basis, it has been accordingly categorically provided for in the relevant schedule under the Tariff Act. This is clear from the fact that the iron ore as categorized under 2601 and the sub headings thereunder, there is no mention whatsoever of any "dry weight" as being canvassed on behalf of the Revenue. However, comparatively if the immediate heading 2602 under which "manganese ores" have been classified, there is a specific inclusion of a dry weight method It is necessary to extract heading 2602 pertaining to the manganese ore, which reads thus:…". **(emphasis supplied)**

16. The Hon'ble High Court has then proceeded to extract the heading 2602 pertaining to manganese ore in paragraph 49 and has further held as under:

"50. **There is another factor which in our opinion would support the petitioners' contention namely that the wet (WMT) method was consistently followed even after the new regime on the ad valorem basis was introduced w.e.f. 13 June 2008 for all these years from**

the time the principles of law recognizing the Wet method, had found approval of the Supreme Court in Gangadhar Agarwal's case in the year 1995 (9 August 1995). It was not thought appropriate by the legislature to take any legislative steps to have a regime different from what was recognized and followed, as laid down in the said decision of the Supreme Court or in other words to substitute the Wet (WMT) method. This is clear from the fact that such modification from the Wet method to the Dry method, has been very recently introduced by an amendment which is brought about w.e.f. 1st May 2022, by the Finance Act 2022, when a supplementary note has been incorporated in the Third Schedule in relation to the products under the heading 2601 to provide that the percentage of Fe (iron) content wherever specified shall be calculated on the Dry weight or Dry Metric Ton (DMT) basis. The amendment reads thus:

"(20) in Chapter 26,-

(i) in clause (f) of Note 1, for the brackets, word and figures "(heading 7112)", the brackets, words and figures "(heading 7112 or 8549)" shall be substituted;

(ii) after Sub-heading Notes, the flowing Supplementary Note shall be inserted, namely :-

"Supplementary Note :

For the products of heading 2601, the percentage of Fe content, wherever specified, shall be calculated on the Dry Weight or Dry Metric Tonne (DMT) basis." (*emphasis added*)

51. **The aforesaid discussion, in our opinion, would show that the Wet method necessarily was applicable till 1 May 2022. The Dry Metric Ton (DMT) basis cannot relate back to any assessment which pertains to the period prior to the amendment, taking effect. Thus, in passing the orders-in-original in question, which pertain to a period prior to 1 May 2022, the Assessing Officer was bound to follow the wet (WMT) method and not otherwise**." **(emphasis supplied)**

17. The Hon'ble High Court has further gone on to hold as under:

"53. In view of the above discussion, we are certain that the principles of law as laid down in Gangadhar Agarwal's case were in regard to classification of the iron ore under heading 2601 for the purpose of determination of export duty on iron ore being on the wet (WMT) method basis and the dry (DMT) method would be applicable with effect from 1 May 2022 by virtue of the Finance Act, 2022.

54. In our above discussion, we have dealt with the primary concern of the petitioners in regard to the applicability of the principles insofar as the method of classification relevant to the assessments in question was required to be applied in determination of the duty levy on iron ore falling under heading 2601 on the touchstone of the law as laid down by the Supreme Court in Gangadhar Agarwal's case. We are thus not persuaded to accept Ms. Desai's contention, that the Dry weight method would be required to be applied to the assessments in question on account of a change in the rate of Tariff w.e.f. 13 June 2008 namely, that now the rate prescribed is on ad valorem basis, and for such reason, the decision of the Supreme Court in the Gangadhar Agarwal's case, is not applicable. As observed by us above, the change from the rate per metric ton being modified to ad valorem, in our opinion, has not brought about any change in the classification as insofar as determination of Fe(iron) content is concerned for the purpose of the levy of the export duty. Such change to introduce the dry method is brought about only w.e.f 1 May 2022 by the Finance Act, 2022. It cannot be that the peculiar (natural) form in which the goods are subjected to export would be ignored.

55. **Ms. Desai's next submission that what would be relevant to be seen is that the contract itself is on Dry Metric Ton (DMT) and hence the contention of the petitioners that the duty should be on the Wet Metric Ton (WMT) is not well founded. It is clearly seen that this was the identical situation in Gangadhar Agarwal's case namely that the export duty was paid by Gangadhar on the Dry method and subsequently a refund application was made by him contending that the export of the iron ore being in the natural form, the Wet method ought to have been followed and such contention of Gangadhar was allowed by Single Judge as confirmed by the Division Bench and ultimately by the Supreme Court. Thus, in our opinion, Ms. Desai's contention on the contract itself being on Dry Metric Ton (DMT), would not be of any relevance. We have sufficiently discussed this issued in the foregoing paragraphs**." **(emphasis supplied)**

18. Incidentally, the Hon'ble Bombay High Court has also noticed the aforementioned Central Board of Excise & Customs Circular No. 4/2012-Cus., dated 17-2-2012, and has further held as under:

"58. It is thus quite clear that such communication is categorically in regard to the applicability of the decision of the Supreme Court in Gangadhar Agarwal's case (supra) and by quoting the observations as

made by the Supreme Court, it is stated that export duty is chargeable according to Fe (iron) content so as to maintain uniformity all over the customs. It is clarified that for the purpose of charging the duty, the assessment of iron ore for determination of Fe (iron) content shall be made on Wet Metric Ton (WMT) basis. There is some confusion created in the wordings as underscored by us in paragraph 3 of the Circular (supra) when the Revenue further clarifies to say that, "in other words, it means deducting the weight of impurities (inclusive of moisture) out of the total weight/gross weight to arrive at Net Fe(Iron) contents." We may at the outset endeavour to remove any such ambiguity, as created by observing that the Circular has clearly observed by quoting the relevant extract of the decision of the Supreme Court to state that the Wet Metric Ton (WMT) becomes applicable. The Circular has not stated that it is the Dry Metric Ton (DMT) method, which would become applicable. In any event, such a confusion ought not to arise in view of the clear position in law as laid down by the Supreme Court in Gangadhar Agarwal's case and the consistent practice being followed by the Revenue following such decision till the introduction of the recent amendment as brought about by the Finance Act, 2022."

19. Thus, given that no other contrary decision of any other High Court has been brought to our notice, we find that the aforesaid decision of the Bombay High Court that has come to our notice, is binding on us. While exhaustively dealing with the process of determination of the appropriate rate of export duty on iron ore, the Hon'ble High Court has emphasised that the change from the rate per metric ton being modified to ad valorem has not brought about any change in the classification as insofar as determination of Fe(iron) content is concerned for the purpose of the levy of the export duty. The Hon'ble High Court has not only culled out the principles in Gangadhar Agarwal's case, but also applied them, and in no uncertain terms, held that the classification of the iron ore under heading 2601 for the purpose of determination of export duty on iron ore would necessarily be on the wet (WMT) method basis and the dry (DMT) method would be applicable with effect from 1 May 2022 by virtue of the Finance Act, 2022.

20. Be that as it may, the admitted position in the instant case is that the Department too has failed to draw any samples or test the same

in the condition in which it existed when presented for export. Therefore, the impossibility of restoring the situation at this belated stage to status quo ante in order to determine the correct percentage of FE content on the basis of wet metric ton basis, as was applicable for the relevant period and the consequent impossibility of determining the correct assessable value/transaction value in respect of these exports of the appellant, also necessarily weighs only in favour the appellant.

21. Therefore, for the reasons elaborated above, on the first issue under discussion, we are of the considered view that the indolence of the Proper Officer in failing at the first instance to discharge the mandated responsibility of carrying out the requisite assessment to determine the correct duty leviable when the goods were presented for export, by drawing samples and subjecting them to the necessary tests and also in failing to seek the requisite clarifications and documents, and if need be, ordering the goods to be provisionally assessed, cannot be to the detriment of the appellant. In the instant case, Revenue cannot then invoke the extended period of limitation to demand differential duty or visit the appellant with financial and penal consequences. Thus, the redetermination of the value made and resultant demands of the differential duty invoking extended period of limitation along with interest, and consequential liability of the exported goods to confiscation and imposition of penalties in the instant case being wholly untenable, cannot sustain. We hold that the findings in this regard in the impugned order are liable to be set aside.

22. As regards the second issue in the case of the appellant M/s Bharat Mines and Minerals, whether the demand of differential customs duty based on the change in rate of tax, vide Notification No.79/2008-cus. dated 13.06.2008 is tenable, the bone of contention is whether the relevant date for determining the rate of duty applicable for the goods exported is the date on which Let Export Order was given, which is 09.06.2008 in the instant case, or whether it is the date when the order permitting loading of goods for exportation, which in the instant case is on 15.06.2008, a date that is after the date of

13.06.2008, when the change of duty came into effect vide the notification No.79/2008-Cus ibid.

23. Thus, the dispute is solely about which is the relevant date for determining the rate of duty applicable for payment of duty in the case of goods being exported.

24. We find that the issue had arisen for consideration of the Honourable Bombay High Court while deciding a customs appeal reported as ***Narayan Bandekar & Sons Pvt Ltd. v. Commissioner, 2010 (259) ELT 362 (Bom)***, wherein after admitting the appeal on the substantial question of law, "*Whether the Tribunal was correct in holding that the relevant date for assessment of duty, was the date on which the loading of goods started i.e. on 1-3-2007*?", the Honourable High Court proceeded to answer the same. The relevant portions of the said decision are reproduced below:

> "**5.** Section 16 of the said reads thus :
>
> **"SECTION 16. Date for determination of rate of duty and tariff valuation of export goods.** - (1) The rate of duty and tariff valuation, if any, applicable to any export goods, shall be the rate and valuation in force, -
>
> (a) in the case of goods entered for export under section 50, on the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation under section 51.
>
> (b) in the case of any other goods, on the date of payment of duty.
>
> (2) The provisions of this section shall not apply to baggage and goods exported by post."
>
> **6.** We are concerned with clause (a) of sub-section (1) of Section 16 which provides that in case of goods entered for export under Section 50, the date of determination of rate of duty and tariff valuation of export goods will be the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation under Section 51 of the said Act. Sections 50 and 51 of the said Act read thus :
>
> "**50. Entry of goods for exportation.-** (1) The exporter of any goods shall make entry thereof by presenting to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export in the prescribed form.
>
> (2) The exporter of any goods, while presenting a shipping bill or bill of export, shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.
>
> **51. Clearance of goods for exportation.-** Where the proper officer is satisfied that any goods entered for export are not prohibited goods and the exporter has paid the duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance and loading of the goods for exportation.''

7. Sub-section (1) of Section 50 contemplates that the exporter of the goods should make entry thereof to the proper officer by presenting a shipping bill. After satisfying that the exporter has paid the duty assessed on the goods, the proper officer can exercise power under Section 51 and make an order permitting clearance and loading of the goods for exportation. In the case of *Prime Mineral Exports Private Ltd*. v. *Union of India and another*, (W.P. No. 374/2010, decided by this Court on 5th July, 2010 [2010 (257) E.L.T. 414 (Bom.)], in paragraph 7, this Court has observed thus :

As per paragraph 40 of the CBEC's Customs Manual of Instructions, on passing of a shipping bill by the Export Department, the exporter has to present the goods to the shed appraiser (export) in docks for examination. The shed appraiser may mark the document to a Custom Officer for examining the goods. If the description and other particulars of the goods are found to be as declared, the shed appraiser gives a "let export order" after which the exporter may contact the preventive superintendent for supervising the loading of the goods on the vessel. The order passed in the nature of "let export order" is an order permitting the clearance and loading of the goods for exportation in accordance with Section 51 of the said Act.

8. Coming back to the facts of the case, on the shipping bills, the proper officer - Commissioner of Central Excise has recorded the examination report which reads thus :

"Examination Report

Inspected the lot, checked the description. Quantity actually loaded will be determined on the basis of draught survey Report."

The Shipping Bills show that Let Export Order was signed on 28th February, 2007 by the Superintendent Central Excise and on the same day an order "allowed for shipment in full" was passed by the said officer. Admittedly, as of 28th February, 2007, only cess was payable on export of iron ore. There is no dispute that cess of Rs. 25,000/- and Rs. 17,000/- respectively was paid against the shipping bills on 28th February, 2007. Admittedly, on 28th February, 2007 no export duty was payable and what was payable was the export cess which was admittedly paid on the same day. The remarks made by the Superintendent of Central Excise show that he was satisfied that the goods were not prohibited goods and, therefore, he passed an order ''allowed for shipment" on 28th February, 2007 and signed "Let Export Order" on the same day. Thus, the order permitting clearance and loading of goods for exportation under Section 51 of the said Act was made on 28th February, 2007. Thus, 28th February, 2007 is the date for determination of the rate of duty. Admittedly, on that day, the export duty was not payable. It became payable with effect from 1st March, 2007. The Commissioner of Customs (Appeals) held that the Let Export Order was issued on 28th February, 2007 and, therefore, both the requirements of filing of the shipping bill and issue of the Let Export Order were completed on 28th February, 2007 and, therefore, the relevant date under Section 16(1)(a) is 28th February, 2007. This aspect has been completely overlooked by the CESTAT. **The CESTAT committed an error by holding that the relevant date as per Section 16(1)(a) of the said Act will have to be treated as 1st March, 2007 when loading was actually started. On a plain reading of Section 51 read with**

> **clause (a) of sub-section (1) of Section 16 of the said Act, the date of determination of the duty is the date on which an order was passed under Section 51 by the proper officer which in this case is 28th February, 2007. The date on which actual loading of iron ore was started is totally irrelevant**." (emphasis supplied)

25. Thus, as per the aforesaid decision, the date on which the proper officer, after due satisfaction that the goods entered for export are not prohibited goods and the exporter has paid the duty, if any, assessed thereon and any charges payable under the Act in respect of the same, makes an order permitting clearance and loading of the goods for exportation under Section 51, will be the date for determination of rate of duty applicable to any export goods as per Section 16(1)(a), in other words, the date on which the Let Export Order is issued. The Hon'ble High Court has categorically held that the date on which actual loading of iron ore was started is totally irrelevant. We find that this Tribunal has taken similar views in its decisions in ***Commissioner v. Kashvi Power and Steel (P) Ltd., 2018 (364) ELT 332 (T)*** and ***Commissioner V. R.M.K.S. Mineral Exports (P) Ltd., 2024 (387) ELT 733 (Tri-Bang.)***. Thus, in the instant case since the Let Export Order was given on 09-06-2008, the demand of duty on account of change in rate of tax consequent to the Notification No.79/2008-cus. dated 13.06.2008, is incorrect and is liable to be set aside.

26. In view of our aforesaid analysis and discussions, we arrive at the conclusion that the appeals merit to be allowed in favour of the appellant. The impugned orders are unsustainable and liable to be set aside, which we hereby do.

The appeals are allowed with consequential reliefs in law, if any.

(Order pronounced in open court on 28.10.2025)

(AJAYAN T.V.)
MEMBER (JUDICIAL)

(M. AJIT KUMAR)
MEMBER (TECHNICAL)

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