CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 86933 of 2014

[Arising out of Order-in-Original CAO No.20/2014/CAC/CC(E)/SJ/GR.VII dated 28.02.2014 passed by the Commissioner of Customs (Export), New Custom House, Mumbai.]

JSW Steel Coated Products Limited .... Appellants
(Demerged entity of JSW Steel Limited)
B-6, MIDC, Navapur Road
Tarapur, Boisar, Palghar Taluka
District Thane – 401 506.

Versus

Commissioner of Customs (Export) .... Respondent
New Custom House
Shoorji Vallabhdas Road
Ballard Estate
Mumbai – 400 001.

And

Customs Appeal No. 87757 of 2014

[Arising out of Order-in-Original No. COMMR./ADJ./CUS/03/2014-15 dated 14.03.2014 passed by the Commissioner of Customs, Central Excise & Service Tax, Goa.]

JSW Steel Limited .... Appellants
JSW Centre
Bandra Kurla Complex,
Bandra (East), Mumbai - 400 051.

Versus

Commissioner of Customs, Goa .... Respondent
ICE House, EDC Complex,
Plot No.6, Patto
Panaji, Goa – 403 001.

And

Customs Miscellaneous Application No. 86743 of 2025
in
Customs Appeal No. 88493 of 2014

[Arising out of Order-in-Original CAO No.50/2014/CAC/CC-I/AB/Oil Unit dated 25.04.2014 passed by the Commissioner of Customs (Import), New Custom House, Mumbai.]

JSW Steel Coated Products Limited .... Appellants
(Demerged entity of JSW Steel Limited)
B-6, MIDC, Navapur Road
Tarapur, Boisar, Palghar Taluka
District Thane – 401 506.

Versus

Commissioner of Customs (Import) **.... Respondent**
New Custom House
Shoorji Vallabhdas Road
Ballard Estate
Mumbai – 400 001.

WITH

Customs Miscellaneous Application No. 86741 of 2025
in
Customs Appeal No. 88495 of 2014

[Arising out of Order-in-Original CAO No.49/2014/CAC/CC-I/AB/VB dated 29.04.2014 passed by the Commissioner of Customs (Import), New Custom House, Mumbai.]

JSW Steel Coated Products Limited **.... Appellants**
(Demerged entity of JSW Steel Limited)
B-6, MIDC, Navapur Road
Tarapur, Boisar, Palghar Taluka
District Thane – 401 506.

Versus

Commissioner of Customs (Import) **.... Respondent**
New Custom House
Shoorji Vallabhdas Road
Ballard Estate
Mumbai – 400 001.

APPEARANCE:
Shri Vipin Kumar Jain, along with Shri Kshitij Awasthi, Advocates for the Appellants

Shri Shambhoo Nath, Special Counsel for the Respondent

CORAM:

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

FINAL ORDER NO. A/86370-86373/2026

Date of Hearing: 01.07.2026
Date of Decision: 02.11.2026

Per: BENCH

These appeals have been filed by M/s JSW Steel Limited, Mumbai and M/s JSW Steel Coated Products Limited, Thane (herein after, referred together as 'the appellants', for short) assailing the Orders-in-Original (i) No. 20/2014/CAC/CC-E/SJ/GR.VII dated 28.02.2014; (ii) No.50/2014/CAC/CC-I/AB/Oil Unit dated 25.04.2014 & No.49/2014/CAC/CC-I/AB/VB dated 29.04.2014 and (iv) COMMR./ADJ./CUS/03/2014-15 dated 14.03.2014 (herein after

referred together as 'the impugned orders') passed by the (i) Commissioner of Customs (Export), New Custom House, Mumbai; (ii) Commissioner of Customs (Import), New Custom House, Mumbai; and (iii) Commissioner of Customs, Goa Custom House, Goa, respectively.

1.2 In the Miscellaneous Applications filed by the appellants, it has been prayed that early hearing of their two appeals be allowed, as similar matters in two other appeals are being listed in the course of normal hearing. On going through the averments made in the miscellaneous applications, we are of the view that the prayer made by the appellants can be considered in the interest of justice. Therefore, the prayer made by the appellants is allowed for hearing such appeals also along with their other appeals, which are listed for hearing before this Bench in the normal course.

1.3 At the outset, learned Counsel for the appellants submitted that the issue concerning present appeals before this Bench of Tribunal regarding classification of the imported steam coal are on a different footing than other cases, for which he relied upon the facts peculiar to these appeals, to state that the imported coal are admittedly 'sub-bituminous coal' by the technical parameters of coal ranking which are also known as prepared coal for use as 'steam coal', and this is different from 'bituminous coal', by standard methods of classification of coal and as described in the Customs Tariff. Further, he stated in the group of cases with the lead case of *Coastal Energy Private Limited Vs. Commissioner of Customs, Central Excise & Service Tax, Guntur* – 2014 (310) E.L.T. 97 (Tri.- Bang.) & *Maruti Ispat and Energy Limited,* in which the appeals are pending before the Hon'ble Apex Court are of admittedly 'bituminous coal' as recorded in paragraph 30 of the Final Order Nos. 20998-21002/2014 dated 20.06.2014 in which it is observed that the appellants themselves showed that the imported coal was as per definition given for 'bituminous coal' in sub-heading note (2), but claimed classification based on its usage as 'steam coal' for the purpose of classification and for availing consequential duty exemption benefits. Therefore, learned Counsel submitted that these appeals can be decided independent of the issue of classification of 'steam coal' pending before the Hon'ble Supreme Court in the case of *Maruti Ispat and Energy Limited* vide Civil Appeal No.9725/2014 and other similarly placed cases. Further, he also referred to the recent

Order dated 22.01.2024 of the Hon'ble Supreme Court in the case of *Commissioner of Customs (Preventive), Mumbai Vs. Reliance Infrastructure Ltd.* – (2024) 15 Centax 263 (S.C.), wherein it was observed that the pendency of the matter before the Hon'ble Apex Court would not come in the way of Tribunal deciding similar case, on the ground that no direction has been given by the Hon'ble Supreme Court not to hear similar cases before other Tribunals/Courts.

1.4 The extract of the said order of the Hon'ble Supreme Court is quoted below:

> *"Learned counsel appearing for the petitioner submitted a similar matter in C.A. No. 9725/2014 is pending before this and this matter may also be tagged with the aforesaid case.*
>
> ***2.*** *However, learned senior counsel appearing for the respondent/Caveator brought to our notice the averments made on Page `D' as well as Page 50 of the Special Leave Petition stating that the CESTAT had failed to follow the judicial discipline by deciding the cases finally when the matter was pending before this Court.*
>
> ***3.*** *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.*
>
> ***4.*** *Learned counsel for the petitioner submitted that an application/affidavit would be filed seeking deletion of the aforesaid paragraphs and/or any other averments casting aspersions on the Tribunal.*
>
> ***5.*** *She is permitted to do so within a period of four weeks from today."*

1.5 We also find that in the case of *Joint Commissioner, Income Tax Vs. Saheli Leasing & Industries Limited* – 2010 (253) E.L.T. 705 (S.C.), the Hon'ble Supreme Court have held as follows:

> ***"34.....***
> ***(x)*** *In order to enable the Court to refer any case to a larger Bench for reconsideration, it is necessary to point out that particular provision of law having a bearing over the issue involved was not taken note of or there is an error apparent on its face or that a particular earlier decision was not noticed, which has a direct bearing or has taken a contrary view. Such does not appear to be a case herein. Thus, it does not need to be referred to a larger Bench as in our considered opinion; it is squarely covered by the judgement of this Court in Gold Coin (supra)".*

1.6 Special Counsel appearing for Revenue has also not raised any objection to the above submission of the learned Advocate for the appellants; and he is prepared to argue the case on merits and facts

peculiar to these appeals. Therefore, the factual position in these appeals that emerges amply clear is that both sides are prepared to submit their arguments in these matters, on the merits of the case and independent of the issues pending before the Hon'ble Supreme Court.

1.7 In this regard, we also find that earlier these four appeals along with a batch of 281 appeals and 62 intervenors arising from cases before the various Benches of the Tribunal viz., Ahmedabad, Bangalore, Chennai, Hyderabad, Kolkata Benches had been referred for consideration before the Larger Bench of the Tribunal, which were disposed of by a common order vide Final Order Nos. 4 to 96 dated 16.01.2017 as follows:

"3. Regarding the classification of the coal, different benches of CESTAT have taken different views at the instance of the parties. The Chennai and Ahmedabad Benches prima facie considered these are the 'steam coal' attracting no duty. This was followed by Mumbai Bench. On the other hand, Bangalore Bench of the CESTAT considered it as 'Bituminous coal' attracting duty of 5%.

4. The CESTAT Chennai Bench has also exempted pre-deposit condition. The same was challenged by the Department before the Hon'ble High Court who declined to intervene in the matter and the matter was restored to CESTAT with a direction to dispose of the reference applications expeditiously.

5. On the other hand, against the decision of the Bangalore Bench, where the coal was considered as 'Bituminous coal' and duty was attracted @5% was challenged by M/s Maruti Ispat and Energy Pvt. Ltd. & Others before the Hon'ble Supreme Court in Civil Appeal Nos. 28937/2014 and 9725/2014. During the course of arguments, it was informed that the matter is sub-judice before the Hon'ble Supreme Court.

6. In view of the above, liberty is granted to the applicants/assessees to come again before this Tribunal after having the final verdict from the Apex Court, within the prescribed time, if advised so.

With the aforesaid liberty, all the reference applications are disposed of.

7. All the intervention applications are disposed with the direction given in para-6 of this order as stated herein before.

8. Registry is directed to place all the appeals as appearing in the cause list before the respective Benches for appropriate order and dispose of the appeals in the light of the directions made in the order of the Larger Bench."

1.8 Since in all these four appeals, the issue under dispute is common i.e., classification of imported coal and consequent eligibility to exemption notification No.12/2012-Customs dated 17.03.2012, and on the basis of the directions by Larger Bench of the Tribunal and the observations made by the Hon'ble Supreme Court in the case of *Reliance Infrastructure Ltd.* (supra), as well as the submission made by both sides, we consider it appropriate to take up all these appeals together for hearing and disposal of the appeals.

2.1 The facts of the case, leading to these appeals, are summarized herein below:

2.2 The appellants *inter alia*, are engaged in the manufacture of steel and steel products. During the disputed period commencing from April, 2012 to January, 2013, they had imported 'steam coal in bulk' of Indonesian Origin vide eight Bills of Entry (B/Es) Nos. 8004800 dated 21.09.2012 & 8600064 dated 27.11.2012 (covered in Customs Appeal No.86933 of 2014); 7510536 dated 27.07.2012 & 8189651 dated 11.10.2012 (covered in Customs Appeal No.87757 of 2014); 7564900 dated 02.08.2012 & 8960556 dated 07.01.2013 (covered in Customs Appeal No.88493 of 2014); and 6533813 dated 13.04.2012 & 6837734 dated 16.05.2012 (covered in Customs Appeal No.88495 of 2014), filed before the jurisdictional Customs authorities at the port of import at Mumbai & Goa. The imported coal is used in the generation of electricity at its captive power plant situated at Tarapur. In the B/Es filed for customs clearance of imported goods, the appellants have classified the goods under Customs Tariff Item (CTI) 2701 1920 of the First Schedule to the Customs Tariff Act, 1975, which covers "steam coal", and consequently, claimed exemption from payment of Basic Customs Duty (BCD) under Sr. No. 123 of Notification No. 12/2012-Cus dated 17.03.2012, by submitting all relevant documents viz., commercial invoice, contracts, certificate of origin issued under ASEAN-India Free Trade Area Preferential Tariff (for supply from Indonesia), Bill of Lading, Certificate of Sampling and Analysis of coal at the load port, certificate of weight etc. The department had never objected to the classification of imported coal declared by the appellants importer and consequential duty exemption, as applicable, in the past over several years.

2.3 On the basis of intelligence inputs received from Directorate of Revenue Intelligence, Ahmedabad (DRI) that several importers were importing 'Bituminous coal' classifiable under CTI 2701 1200 in the guise of 'steam coal' classifiable under CTI 2701 1920, detailed investigation was conducted by the Special Intelligence & Investigation Branch-Import (SIIB), New Custom House, Mumbai / Goa including recording of statements from persons concerned. Upon completion of investigation, Show Cause Notices were issued in respect of all such imports, which culminated in issue of impugned orders, wherein Commissioner of Customs, Mumbai/Goa as adjudicating authority have held classification of imported goods as bituminous coal under CTI 2701 1200 under final assessments made in terms of Section 18(2) of the Customs Act, 1962 and confirmed the customs duty demands along with interest under Section 28(1) ibid and imposed penalties on the appellants under Section 112(a) ibid. Feeling aggrieved with the impugned orders, the appellants have filed these appeals before the Tribunal.

3.1 Learned Counsel appearing for the appellants, stated that the endeavor of the department has been to show that the Gross Calorific Value (GCV) of the 'steam coal' imported by the appellants on a most, mineral-matter free (MMMF) basis, exceeds 5833 kcal/kg.; this forms the sole basis for the department's conclusion that the subject coal is of 'bituminous' type and not as 'steam coal'. He stated that in order to arrive at such conclusion, the imported coal was not tested by drawing samples at the port of discharge; instead, the desired result has been arrived at by arbitrarily adopting certain values from the appellant's load-port test reports and by applying them to a formula appearing on the web-site of the *US Energy Information Administration* (EIA) viz., '*Coal Production and Preparation Report (Instructions)'* known as Parr Formula. He claimed that such methodology is fundamentally flawed, mis-conceived and based on assumptions inconsistent with accepted principles of coal analysis and calorific value determination. He further stated that the Parr formula relied upon by the department, is one of the many formulae that can be used for calculating GCV of coal on MMMF basis and is also referred to in Americal Standard for Testing and Materials (ASTM) D 388-12 'Classification of Coal by Rank'. He stated that this formula has been wrongly adopted by the department in the present case despite the fact that the coal in question was not

American Coal (to which the formula is intended to apply) but an Indonesian Coal; and also that the values of some of the variables were not arrived at by applying the specific standards that Parr formula contemplates. As per ASTM D 388-12, GCV on MMMF basis can be arrived at from the GCV on an as-received basis by applying the Parr formula provided that the samples is also done in accordance with the relevant prescribed ASTM standards. He further submitted that in the impugned orders it has been concluded that the impugned goods are classifiable as "bituminous coal" on the basis that it satisfies the parameters in sub-heading Note (2) to Chapter 27, as per computation (by adopting "Parr formula") done by the department on testing parameters reported in load-port test reports of the imported goods provided by the appellants, but by applying the Parr formula incorrectly, as per their understanding. By referring to the said sub-heading Note (2) of Chapter 27 of the Customs Tariff, which reads as: "*bituminous coal" means coal having a volatile matter limit (on a dry, mineral-matter-free basis) exceeding 14% and a calorific value limit (on a moist, mineral-matter-free basis) equal to or greater than 5,833 kcal/kg";* he stated that the department had adopted its own methodology by relying on the opinion given by the Joint Director, Customs Laboratory, JNCH, Nhava Sheva, which is not legally valid and contrary to the requirements of Customs Tariff Act, 1975. This is also one of the peculiar fact distinguishing it before the batch of cases pending before the Hon'ble Supreme Court, as the controversy in this case is not that it is a bituminous coal, as admittedly these are sub-bituminous coal where by such incorrect application of Parr formula, the department / adjudicating authorities are classifying it under different classification than the one declared; whereas the issue in dispute before the Hon'ble Apex Court is that those are of bituminous coal, but are used as 'steam coal' and thus, whether those are eligible for duty exemption.

3.2 Further, he stated that in all the agreements entered into by the appellants i.e., 'Coal sale and purchase contracts' with the foreign suppliers for procuring steam coal of Indonesia origin, the specification of coal that needs to be guaranteed by the suppliers include 'Gross Calorific Value' (GCV) of 6300 Kcal/kg. on ARB basis as per ASTM D-5865-04 standard; Volatile matter of 40 approximate on ADB basis as per ASTM D-3175-07 standard. In all the imported coal, the suppliers

have provided Load Port certificate of sampling and analysis giving specific test results including Gross Calorific Value (ARB/ADB) and Volatile matter (ADB). Since such parameters have to be converted into dry, mineral-matter-free basis for measuring volatile matter limit and on a moist, mineral-matter-free basis for measuring calorific value limit, to decide whether these would fall under the contours of sub-heading Note (2) of Chapter 27, the formula as given by Mr. Parr. S.W., first published in Bulletin No.180 on '*The classification of Coal, Engineering Experiment Station, University of Illinois, 1928*' is to be applied. This formula is known as 'Parr formula' and is universally followed thereafter by various testing laboratories, and the same is required to be applied, in their case also. This formula has also been prescribed as a standard method in ASTM D 388-12 providing as the standard formula for arriving at the adjusted ash content, which is one of the variables needed to apply the Parr formula. For ease of reference, he also quoted the Parr formula, along with the formula for calculating the adjusted Ash content and has reproduced it as below:

"Parr formula for calculating GCV on MMMF basis:

$$\text{Moist, Mm} - \text{free Btu} = 100(\text{Btu} - 50S)/(100 - (1.08A + 0.55S)) \quad (4)$$

where:

Btu = gross calorific value, Btu/lb,
FC = fixed carbon, %,
VM = volatile matter, %,
M = moisture, %,
A = ash, %, and
S = sulfur, %.

The quantities given in above equation (4) are all on the inherent moisture basis. Ash (A) value is to be adjusted in accordance with the following formula:

8.2 Adjust the ash value determined in accordance with Test Method D3174 to be free of sulfate as follows:

$$A = A_d\left(1 - \frac{SO_3}{100}\right)\left(1 - \frac{M}{100}\right) \quad (1)$$

where:

A = adjusted ash value on the inherent moist basis,
A_d = ash yield, dry basis, determined in accordance with Test Method D3174,
SO_3 = in the ash determined in accordance with Test Method D1757 or D5016, and
M = inherent moisture.

On the above basis, learned Counsel asserted that it can be irrefutably understood that for calculating calorific value on moist, mineral-matter free basis, the values of Btu of Gross Calorific Value (GCV), adjusted

Ash, adjusted Sulphur (being the variables in the formula) have to be determined firstly, to arrive at the outcome of GCV on MMMF basis.

3.3 In this regard, learned Counsel further stated that in terms of IS-1350 which provides for proximate analysis and methodology for sampling and testing to determine the Gross Calorific Value (GCV) of coal, the department ought to have tested the imported goods in determining the correct classification of the goods, as the burden to prove that the imported goods are bituminous coal, and not steam coal is indeed rests with them. However, the department neither tested the goods as per the requirements of sub-heading note (2) limits nor adopted the conversion (Parr formula) properly as provided under American Standard for Testing and Materials ('ASTM'), to arrive at the requisite parameter limits. Without prejudice to the above stand, he further contended that neither is there any legal basis for applying the 'Parr formula' in computing GCV on MMMF basis nor could variables be arbitrarily adopted from the load port test report, as per ASTM Standard, as done by the department to arrive at such values showing that the imported goods have fulfilled the criteria to be categorized as 'bituminous coal'. In this regard, he also submitted that as per ASTM standard itself, the formula equation must be on an inherent-moisture basis (i.e., as-received basis or ARB); whereas, the values from the load port test report is adopted by the department by its calculation whereby ignoring the standard methodology and incorrectly applying the values without adjustment, as opined by Deputy Chemical Examiners. On this, he also asserted that if the calculations for determining GCV on MMMF basis is undertaken as per ASTM standard, duly adjusting the values for inherent moisture, Ash, Sulphur values, then the GCV would be far less than the prescribed limit would be much less than 5822 Kcal/kg. However, he also asserted that if contrary to the ASTM standards as well as to EIA document relied upon by the department, when GCV is calculated by taking the variables on Air-Dried basis (ADB), then it would mean that for the variable 'moisture', instead of taking inherent moisture, the value is incorrectly applied by removing the inherent moisture, leaving only the residual moisture. This would lead to a situation, where denominator of the Parr formula is reduced (as the values are of GCV, Ash and Sulphur are on ADB) and mathematically the numerator of the formula is inflated to arrive at the GCV on MMMF basis to show it as though exceeding the criteria

of 5833 kcal/kg. and the same is untenable.

3.4 In explaining further about the incorrect determination of the GCV and volatile matter in the imported goods in order to decide whether they fulfill the limits as per Chapter sub-heading Note (2), he submitted the following: The objective of the Parr formula as per ASTM D-388 12 is clearly to adjust the GCV given on as 'As-Received Basis' (ARB) of 'moist' mineral-bearing coal to arrive at GCV of 'moist', but mineral-matter-free coal, by applying the said Parr formula. Department has, however, incorrectly used values on an 'air-dried basis' or ADB for the variables in the Parr formula. Air-drying is a process that involves drying the coal leaving only "residual moisture" (rather than "inherent moisture" as required by the Parr formula). The fact that ADB values are distinctly different from values on an inherent (natural bed) moisture basis is clear from the explanations in ASTM D121-15 of these terms. The discussion therein below the definition of "inherent moisture" records in no unclear terms that the sample should not be allowed to dry. It is axiomatic that values on an 'air-dried basis' are recorded once the coal has been subject to some sort of drying, in which some fraction, if not the entire inherent moisture evaporates. It is, therefore, inconceivable as to how the department could have used the values on an air-dried basis, where inherent moisture-based values are required as per sub-heading note (2) to Chapter 27, in order to determine the appropriate classification of imported goods. Even in certain cases where the imported goods were sent for testing to the Customs laboratory, the results of such testing have either been wholly or partly undisclosed in the show cause notices and has not been relied upon. On the above basis, he stated that the department has instead arbitrarily adopted certain values from the appellants' load port test reports and used the Parr formula ASTM D 388-12 "Classification of Coals by Rank" to artificially arrive at a gross calorific value on a moist, mineral-matter-free basis of above 5,833 kcal/kg. in all cases of their import. He further stated that it is a fact that sampling and testing of the imported coal are done independently by the testing agencies and in accordance with ASTM standards. However, the department have instead chosen to use the PARR formula (as stated in the ASTM Standard D388) without adherence to the methods specified therein, but seemingly on the basis of the opinion given by the Joint Director, Customs Laboratory, JNCH, Nhava Sheva. As such opinion of Joint

Director provide no scientific or legal basis, or indeed any reasoning or authority, whatsoever for supplanting the Parr formula as the basis for determination of GCV under the Indian Customs framework, he has also submitted that it became legally impermissible to rely upon such opinion given by Joint Director, particularly in view of the denial of the appellants' request for cross-examination of the Joint Director for no cogent reason. As such, he pleaded that no weightage can be attached to this evidence and to the test results of impugned goods, obtained by adopting the method of determination of the parameters, based on such opinion.

3.5 Learned Counsel further stated the load port test report does not represent the composition of the impugned goods as imported and presented for assessment, and therefore, he claimed that reliance on the same is hence, untenable. He submitted that in terms of Section 12(1) of the Customs Act, 1962, customs duty is leviable on goods as imported into India; the classification must therefore be determined with reference to imported goods and as it is presented for assessment before customs authorities, and not necessarily in the condition they existed at the load port. He placed reliance in this regard on the case laws of *Dunlop India limited & Madras Rubber Factory Vs. Union of India and others* reported at 1983 (13) E.L.T. 1566 (S.C.) and *Commissioner of Customs, New Delhi Vs. Sony India Limited* reported at 2008 (231) E.L.T. 385 (S.C.). He further stated that load port test report fails to capture the characteristics of coal as imported, especially when the case turns entirely on calorific value on Moist, Mineral-Matter Free (MMMF) basis, which is highly sensitive to the level and distribution of moisture in the coal. He also stated that scientific literature confirms that coal moisture redistributes and changes during transit. Without prejudice to the above, he also stated that the department was required to undertake independent sampling and testing of imported coal when each of the constituent variables viz., Ash, Sulphur, moisture and GCV, before applying the Parr formula. He stated that under ASTM D288-12, the Ash percentage used in the Parr formula must be adjusted to an inherent moisture basis by using the prescribed formula i.e., A (Ash) = A_d [1 – (SO_3/100)] X [1 – (M/100)]. He also stated that each variable in this equation must be determined by the corresponding ASTM method i.e., "A_d" by D3174, "SO_3" by D1757, and "M" as either on as received moisture, if sample is done as

per D4596 or the equilibrium moisture as per D1412; there is no evidence that the values in the load port test report were derived or tested in accordance with these methods and the report does not actually mention A_s or SO_3 at all. On the contrary, he stated that the Ash value in the load port report is on an inherent-moisture basis required under ASTM D388-12. Therefore, he claimed that the departments' application of the load port Ash percentage is erroneous. As regards SO_3, he stated that at paragraph 12 of SCN, it records that department ignored its value, terming it as negligible; this again shows that the value of Ash content considered by the department while applying the Parr formula was incorrect. Thus, he stated that having failed to follow the prescribed computation, the department's reliance on the Parr formula is inconsistent and untenable. Thus, he stated that it is apparent that the department had failed to compute the GCV on MMMF basis as provided in the formula and they themselves seeks to apply. Therefore, he submitted that requisite variables adopted by the department on a 'ADB' basis which is having only 'residual moisture' remaining after the process of air drying has resulted in incorrect determination, instead of ASTM standard requiring values on "ARB" basis which is having the 'inherent moisture'; and therefore the duty demands confirmed on such a basis of the department's calculation is not legally sustainable.

3.6 Learned Counsel also stated it is settled law that where the department is proposing to change the classification, the burden rests on them to prove their case as held by the Hon'ble Supreme Court in the case of *HPL Chemicals Vs. CCE, Chandigarh [2006 (5) SCC 2018].* On the other hand, the entire approach of the department in totally ignoring direct evidence in the form of test reports from samples actually drawn from imported goods at the discharge ports (where available), or failing to collect these in the first place when they could easily have done so; based on test reports available as per Load Port Testing and Analysis results, suitably modified by Parr formula. Instead, the department in attempting to derive the GCV by applying a formula without correctly determining the variables required to be inputted into that formula is totally perverse and unsustainable, as held by the Tribunal in the case of *Reliance Infrastructure Ltd.* (supra). As such incorrect adoption of the Parr formula is as per the letter dated 07.03.2013 of the Joint Director, CRCL Customs Laboratory, the

burden of proof that it is a reliable measure as per the definition given in terms of sub-heading note (2) to Chapter 27 lies with the department; besides this, he stated that a reasonable opportunity for cross examination of the said official of the department also needs to be given to the appellants for sustaining the same adequate proof in terms of the customs statute and the instructions issued by the department for testing/re-testing of the imported goods.
retest 2017 circular etc.

3.7 In support of their stand, the learned Counsel had relied upon the following judicial pronouncements:

(i) *Tamil Nadu Generation & Distribution Corpn. Ltd. v. C.C. Tutiorin, – 2017 (348) E.L.T. 585 (Tri. – LB)*

(ii) *National Aluminium Co. Ltd v. C.C. & S.T., Visakhapatnam, - 2018 (361) E.L.T. 939 (Tri. – Hyd.)*

(iii) *Reliance Infrastructure Ltd. v. Commissioner of Customs (Preventive), -Customs Appeal No. 87903 of 2014 – Final Order No. A/86077/2023 dated 05.07.2023*

(iv) *Commissioner of Customs (Preventive), Mumbai v. Reliance Infrastructure Ltd., - 2024 (389) E.L.T. 309 (S.C.)*

(v) *Dunlop India Ltd. & Madras Rubber Factory Ltd v. Union of India & Ors., - 1983 (13) E.L.T. 1566 (S.C.)*

(vi) *Commissioner of Customs, New Delhi v. Sony India Ltd., - 2008 (231) E.L.T. 385 (SC)*

(vii) *Bombay Oil Industries Ltd. v. Union of India, - 1996 (77) E.L.T. 32 (S.C.)*

(viii) *Tamil Nadu Generation and Distribution Corporation Ltd. (TANGEDCO) and others v. CC Tuticorin, - 2015 (316) E.L.T. 305 (Tri. – Chennai)*

4.1 Learned Special Counsel appearing for the Revenue reiterated the findings recorded by the learned Commissioner in the impugned order. He further stated that in classification of imported goods in terms of the statutory definition provided First Schedule to the Customs Tariff should alone be adopted; the impugned orders have held that the imported coal had fulfilled the prescribed limits provided for 'bituminous coal' in terms of sub-heading Note 2 of Chapter 27 i.e., volatile matter limit (on a dry, mineral-matter-free basis) was exceeding 14%; and, the calorific value limit (on a moist, mineral-matter-free basis) is equal to or greater than 5833 kcal/kg. Therefore, he stated that the appellants have mis-declared the

imported goods as 'steam coal' classifiable under CTI 2701 1920, for availing ineligible exemption from BCD under Notification No.12/2012-Customs dated 17.03.2012, on the following grounds:

(i) in respect of the impugned goods, since the term 'bituminous coal' has been defined in terms of sub-heading note (2) to Chapter 27 of the Customs Tariff, these parameters are required to be applied to the imported goods, in order to decide the classification of impugned goods, and to come to the conclusion whether or not, the impugned goods are eligible for duty exemption under serial No.123 of Notification No.12/ 2012-Customs dated 17.03.2012;

(ii) Once the imported goods are tested positive for fulfilling the parameters specified in sub-heading note (2), then these goods are correctly classifiable as 'bituminous coal' classifiable under CTI 2701 1200;

(iii) the specific tariff entry 'bituminous coal' under CTI 2701 1200 is to be preferred than the general entry 'steam coal' under CTI 2701 1920, as classification of goods is to be done as per General Rules of Interpretation-GIR 1&6 to the Customs Tariff in terms of headings and sub-headings;

(iv) that the appellants have provided various parameters of the imported coal on Air-Dried Basis (ADB)/As-Received Basis (ARB), including the two specified parameters required for sub-heading note (2) to Chapter 27, from the test reports of Load Port analysis, which is required to be converted into Moist, Mineral matter-free (Moist, mmf) basis. For this purpose, they had taken the advice of Joint Director, Chemical Examiner, CRCL Laboratory, Kandla, in arriving at the converted figures for calculating the specific limits;

(v) In the impugned orders, the demand of customs duty was confirmed on the basis of values of calorific value, volatile matter limits determined duly taking into account contents of Ash, Sulphur, moisture etc., as reported either ARB/ADB in the Load Port Analysis reports submitted by the appellants, duly calculated as per formulae suggested by DRI and confirmed by Joint Director, CRCL Laboratory, Raigad, Maharashtra vide their letter F. No. JNCH/T.O./2012-13 dated 07.03.2013 which he claimed is an universal formula for application in the matter of coal.

4.2 Accordingly, he asserted that in terms of Rule 6 of General Rules for Interpretation of import tariff, the impugned goods are not covered as 'steam coal' under heading 2701 1920 and therefore, he claimed that the adjudged demands confirmed in the impugned orders are sustainable. Accordingly, he submitted that the appeals preferred by

appellants may be dismissed.

4.3 In support of the Revenue's stand, learned Special Counsel had relied upon the following case laws:

(i) *Coastal Energy Pvt Ltd & Others Vs. Commissioner of Customs, CEX & Service Tax, Guntur – 2014 (8) TMI-246- CESTAT Bangalore*

(ii) C*oastal Energy Pvt Ltd VS. Commissioner of Customs, Mangalore – 2014 (9) TMI-1051- CESTAT Bangalore*

(iii) M*aheshwari Brothers & Jai Raj Ispat Ltd Vs. Commissioner of Customs & Service Tax, Guntur – 2015 (1) TMI-208- CESTAT Bangalore*

(iv) *Kyori Oremin Ltd VS. Union Bank of India – 2018 (10) TMI-1378- Gujrat High Court*

5. Heard both sides and perused the records of the case. We have also considered the additional written submissions given in the form of paper books by learned Advocates for the appellants as well as Special Counsel for the Revenue, and the arguments advanced during the hearing of these cases.

6. The issues for consideration before us are as below:

(i) determination of the proper classification of imported goods, for deciding on the appropriate levy of customs duty i.e., Basic Customs duty (BCD), leviable under Section 12 of the Customs Act, 1962, as specified under the First Schedule to the Customs Tariff Act, 1975; and, the eligibility to avail the benefit of Notification No.12/2012-Customs dated 17.03.2012;

(ii) determine, whether the demand of duty including confiscation of imported goods and redemption fine thereof, penalty imposable on the appellants, as confirmed in the impugned orders are sustainable or not?.

The period of dispute involved in the present case is from April, 2012 to January, 2013, since the eight B/Es covering the impugned goods involved in the present appeals are filed between 13.04.2012 to 07.01.2013.

7. In order to address the above issue of classification of imported goods, we would like to refer the relevant legal provisions contained in Section 12 of the Customs Act, 1962; relevant entries in the First Schedule to the Customs Tariff Act, 1975 and rules framed thereunder, for consideration of proper and appropriate classification

of the subject goods under dispute.

Customs Act, 1962

"***Section 2. Definitions.*** -

In this Act, unless the context otherwise requires,—

(1) "adjudicating authority" means any authority competent to pass any order or decision under this Act, but does not include the Board, Commissioner (Appeals) or Appellate Tribunal;

xxx xxx xxx xxx

(2) [1]"assessment" means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act) or under any other law for the time being in force, with reference to—

(a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;

(b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;

(c) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or under the Customs Tariff Act or under any other law for the time being in force;

(d) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;

(e) the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods;

(f) any other specific factor which affects the duty, tax, cess or any

other sum payable on such goods,

and includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil;

Section 12. Dutiable goods. -

(1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, on goods imported into, or exported from, India.

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[1] *Substituted by the Finance Act, 2018, w.e.f. 29-3-2018. Prior to its substitution, clause (2), as substituted by the Finance Act, 2011, w.e.f. 8-4-2011, read as under: "assessment" includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil;'*

(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government."

Section 17. Assessment of duty.

(1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50 shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

(2) The proper officer may verify [2][the entries made under section 46 or section 50 and the self-assessment of goods referred to in sub-section (1)] and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary:

(3) For verification of self-assessment under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any contract, broker's note, insurance policy, catalogue or other document, whereby the duty leviable on the imported goods or export goods, as the case may be, 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 document or furnish such information.

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

(5) Where any reassessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter [3][regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification issued therefor under this Act] and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said reassessment in writing, the proper officer shall pass a speaking order on the reassessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

(6) [4][Where re-assessment has not been done or a speaking order has not been passed on reassessment, the proper officer may audit the assessment of duty of the imported goods or export goods at his office or at the premises of the importer or exporter, as may be expedient, in such manner as may be prescribed]

Explanation.—For the removal of doubts, it is hereby declared that in cases where an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 before the date on which the Finance Bill, 2011 receives the assent of the President, such imported goods or export goods shall continue

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[2] Substituted for "the self-assessment of such goods" by the Finance Act, 2018, w.e.f. **29-3-2018**.
[3] Words "regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification issued therefor under this Act" omitted by the Finance Act, 2018, w.e.f. 29-3-2018.
[4] Omitted by the Finance Act, 2018, w.e.f. 29-3-2018.

to be governed by the provisions of section 17 as it stood immediately before the date on which such assent is received.

Section 18. Provisional assessment of duty.

[5] [(1) Notwithstanding anything contained in this Act but without prejudice to the provisions of section 46 [[6]and section 50],—

(a) where the importer or exporter is unable to make self-assessment under sub-section (1) of section 17 and makes a request in writing to the proper officer for assessment; or

(b) where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test; or

(c) where the importer or exporter has produced all the necessary documents and furnished full information but the proper officer deems it necessary to make further enquiry; or

(d) where necessary documents have not been produced or information has not been furnished and the proper officer deems it necessary to make further enquiry,

[7][the proper officer may assess the duty leviable on such goods, provisionally,] if the importer or the exporter, as the case may be, furnishes such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty as may be finally assessed or re-assessed, as the case may be, and the duty provisionally assessed.]

[8][(1A) Where, pursuant to the provisional assessment under sub-section (1), if any document or information is required by the proper officer for final assessment, the importer or exporter, as the case may be, shall submit such document or information within such time, and the proper officer shall finalise the provisional assessment [9][in such manner], as may be prescribed.]

[10][(1B) The proper officer shall finalise the duty provisionally assessed, within two years from the date of such assessment under sub-section (1):

Provided that the Principal Commissioner of Customs or the Commissioner of Customs may, on sufficient cause being shown and for reasons to be recorded in writing, extend the said period to a further period of one year:

Provided further that in respect of any provisional assessment pending under sub-section (1) as on the date on which the Finance Bill, 2025 receives the assent of the President, the said period of two years shall be reckoned from the date on which the said Finance Bill receives the assent of the President.

(1C) Where the proper officer is unable to assess the duty finally within the time specified under sub-section (1B) for the reason that—

(a) an information is being sought from an authority outside India through a legal process; or

(b) an appeal in a similar matter of the same person or any other person is pending before the Appellate Tribunal or the High Court or

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[5] Substituted by the Finance Act, 2011, w.e.f. 8-4-2011

[6] Inserted by the Finance Act, 2018, w.e.f. 29-3-2018.

[7] Substituted for "the proper officer may direct that the duty leviable on such goods, be assessed provisionally" by the Finance Act, 2025, w.e.f. **29-3-2025**.

[8] Inserted by the Finance Act, 2018, w.e.f. 29-3-2018.

[9] Substituted for "within such time and in such manner" by the Finance Act, 2025, w.e.f. **29-3-2025**.

[10] Inserted by the Finance Act, 2025, w.e.f. **29-3-2025**.

the Supreme Court; or
(c) an interim order of stay has been issued by the Appellate Tribunal or the High Court or the Supreme Court; or
(d) the Board has, in a similar matter, issued specific direction or order to keep such matter pending; or
(e) the importer or exporter has a pending application before the Settlement Commission or the Interim Board,

the proper officer shall inform the importer or exporter concerned, the reason for non-finalisation of the provisional assessment and in such case, the time specified in sub-section (1B) shall apply not from the date of the provisional assessment but from the date when such reason ceases to exist.]

(2) When the duty leviable on such goods is assessed finally [11][or re-assessed by the proper officer] in accordance with the provisions of this Act, then—
(a) in the case of goods cleared for home consumption or exportation, the amount paid shall be adjusted against the duty finally assessed [12][or re-assessed, as the case may be,] and if the amount so paid falls short of, or is in excess of the duty finally assessed [13][or re-assessed, as the case may be,] the importer or the exporter of the goods shall pay the deficiency or be entitled to a refund, as the case may be ;

(b) in the case of warehoused goods, the proper officer may, where the duty finally assessed [14][or re-assessed, as the case may be,] is in excess of the duty provisionally assessed, require the importer to execute a bond, binding himself in a sum equal to twice the amount of the excess duty.

[15][(3) The importer or exporter shall be liable to pay interest, on any amount payable to the Central Government, consequent to the final assessment order [16][or re-assessment order] under sub-section (2), at the rate fixed by the Central Government under section [17][28AA] from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.

(4) Subject to sub-section (5), if any refundable amount referred to in clause (a) of sub-section (2) is not refunded under that sub-section within three months from the date of assessment of duty finally [18][or re-assessment of duty, as the case may be], there shall be paid an interest on such unrefunded amount at such rate fixed by the Central Government under section 27A till the date of refund of such amount.

(5) The amount of duty refundable under sub-section (2) and the interest under sub-section (4), if any, shall, instead of being credited to the Fund, be paid to the importer or the exporter, as the case may be, if such amount is relatable to—
(a) the duty and interest, if any, paid on such duty paid by the importer, or the exporter, as the case may be, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;
(b) the duty and interest, if any, paid on such duty on imports made by an individual for his personal use;
(c) the duty and interest, if any, paid on such duty borne by the buyer,

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[11] Inserted by the Finance Act, 2011, w.e.f. 8-4-2011.
[12] Inserted by the Finance Act, 2011, w.e.f. 8-4-2011.
[13] Inserted by the Finance Act, 2011, w.e.f. 8-4-2011.
[14] Inserted by the Finance Act, 2011, w.e.f. 8-4-2011.
[15] Inserted by the Taxation Laws (Amendment) Act, 2006, w.e.f. 13-7-2006.
[16] Inserted by the Finance Act, 2011, w.e.f. 8-4-2011.
[17] Substituted for "28AB" by the Finance Act, 2018, w.r.e.f. 8-4-2011.
[18] Inserted by the Finance Act, 2011, w.e.f. 8-4-2011.

if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(d) the export duty as specified in section 26;

(e) drawback of duty payable under sections 74 and 75.]

Section 144. Power to take samples. -

(1) The proper officer may, on the entry or clearance of any goods or at any time while such goods are being passed through the customs area, take samples of such goods in the presence of the owner thereof, for examination or testing, or for ascertaining the value thereof, or for any other purposes of this Act.
(2) After the purpose for which a sample was taken is carried out, such sample shall, if practicable, be restored to the owner, but if the owner fails to take delivery of the sample within three months of the date on which the sample was taken, it may be disposed of in such manner as the Principal Commissioner of Customs or Commissioner of Customs may direct.
(3) No duty shall be chargeable on any sample of goods taken under this section which is consumed or destroyed during the course of any test or examination thereof."

Customs Tariff Act, 1975

Section 1. Short title, extent and commencement. *-*

(1) This Act may be called the Customs Tariff Act, 1975.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Section 2. Duties specified in the Schedules to be levied. *-*

The rates at which duties of customs shall be levied under the Customs Act, 1962 (52 of 1962), are specified in the First and Second Schedules.

xxx xxx xxx xxx

THE FIRST SCHEDULE – IMPORT TARIFF
(Refer Section 2)

THE GENERAL RULES FOR THE INTERPRETATION OF IMPORT TARIFF (GIR)

Classification of goods in this Schedule shall be governed by the following principles:

1. The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:

2.(a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished articles has the essential character of the complete or finished article. It shall also be taken to

include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.

(c)When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

4. Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.

…

6. For legal purposes, the classification of goods in the sub-headings of a heading shall be determined according to the terms of those sub headings and any related sub headings Notes and, mutatis mutandis, to the above rules, on the understanding that only sub headings at the same level are comparable. For the purposes of this rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

THE GENERAL EXPLANATORY NOTES TO IMPORT TARIFF

1. Where in column (2) of this Schedule, the description of an article or group of articles under a heading is preceded by "-", the said article or group of articles shall be taken to be a sub-classification of the article or group of articles covered by the said heading. Where, however, the description of an article or group of articles is preceded by "- -", the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "-". where the description of an article or group of articles is proceeded by "---" or "----", the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "-"

or "--". Where the description of an article or group of articles is preceded by "----", 'in addition to being a sub-classification of "-" or "--", the said article or group of articles may also be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "---".

2. The abbreviation "%" in any column of this Schedule in relation to the rate of duty indicates that duty on the goods to which the entry relates shall be charged on the basis of the value of the goods as defined in section 14 of the Customs Act, 1962 (52 of 1962), the duty being equal to such percentage of the value as is indicated in that column.

3. In any entry, if no rate of duty is shown in column (5), the rate shown under column (4) shall be applicable.

ADDITIONAL NOTES

In this Schedule, —

(1)(a) "heading", in respect of goods, means a description in list of tariff provisions accompanied by a four-digit number and includes all sub-headings of tariff items the first four-digits of which correspond to that number;

(b) "sub-heading", in respect of goods, means a description in the list of tariff provisions accompanied by a six-digit number and includes all tariff items the first six-digits of which correspond to that number;

(c) "tariff item" means a description of goods in the list of tariff provisions accompanying eight-digit number and the rate of customs duty;

(2) the list of tariff provisions is divided into Sections, Chapters and Sub-Chapters;

(3) in column (3), the standard unit of quantity is specified for each tariff item to facilitate the collection, comparison and analysis of trade statistics.

LIST OF ABBREVIATIONS USED

Abbreviations	*For*
AC	*Alternating Current*
xxx	*xxx*
Kcal/kg	*Kilocalorie(s) per kilogram*
xxx	*xxx"*

From plain reading of the above legal provisions, it transpires that in order to determine the appropriate duties of customs payable on any imported goods, one has to make an assessment of the imported goods for its correct classification under the First Schedule to Customs Tariff Act, 1975 in accordance with the provisions of the Customs Tariff Act by duly following the General Rules for Interpretation (GIR) and the General Explanatory notes (GEN) contained therein. The First Schedule to the Customs Tariff Act, 1975

specifies the various categories of imported goods in a systematic and well-considered manner, in accordance with an international scheme of classification of internationally traded goods, i.e., 'Harmonized Commodity Description and Coding System' (HS). Accordingly, goods are to be classified taking into consideration the scope of headings / sub-headings, related Section Notes, Chapter Notes and the General Rules for the Interpretation (GIR) of the First Schedule to the Customs Tariff Act, 1975. Rule 1 of the GIR provides that the classification of goods shall be determined according to the terms of the headings of the tariff and any relative Section notes or Chapter notes and thus, gives precedence to this while classifying a product. Rules 2 to 6 provide general guidelines for classification of goods under the appropriate sub-heading. In the event of the goods cannot be classified solely on the basis of GIR 1, and if the headings and legal notes are not otherwise required, the remaining Rules 2 to 6 may then be applied in sequential order. Further, while classifying goods, the foremost consideration is the 'statutory definition', if any, provided in the Customs Tariff Act. In the absence of any statutory definition, or any guideline provided by HS explanatory notes, the trade parlance theory is to be adopted to ascertain as to how the goods are known in the common trade parlance for the purpose of dealing between the parties.

Further, in context with the case in hand, we note that the following are some of the important rules to be followed in the scheme of determining correct classification of imported goods:

> (i) classification of goods shall be determined according to the terms of the headings and any relative Section or Chapter Notes; (GIR 1)
> …
>
> (iii) if the goods are found to be classifiable under two or more headings, then the classification shall be effected as per the rules provided under 3(a), 3(b) and 3(c) [GIR 3]
>
> (iv) Goods which cannot be classified in accordance with the aforesaid rules, then the same shall be classified under the heading appropriate to the goods to which they are more akin. (GIR 4)
> …
> (vi) For legal purposes, the classification of goods in the sub-headings shall be determined according to the terms of those sub-headings and any related sub-heading Notes (GIR 6)

8. In the impugned orders, the learned Commissioners have given the following findings in arriving at the conclusion for classification of the impugned goods under CTI 2701 1200. The relevant paragraphs of the said impugned orders are extracted and given below:

Impugned Order dated 28.02.2014 in C/86933/2014:

> *"50. Now I examine the reasoning adopted by the department to allege that the goods imported vide B/E No. 8004800 dated 21.09.2012 and 8600064 dated 27.11.2012 fulfilled the twin criteria to be classified as bituminous coal and not as steam coal as declared by the importer. It is stated in the notice that the said goods were accompanied by Certificate of sampling and analysis report issued by load port Inspection Agency but volatile matter limit (on dry, mineral-matter free basis) and calorific value limit (in a moist, mineral-matter free basis) were not mentioned on them. The same has been derived by the department applying the following Formulas as confirmed by Joint D rector, Customs and Central Revenue Control Laboratory (CRCL), Jawaharlal Nehru Customs House, Nhava Sheva, Raigad, Maharashtra vide a letter F.No: JNCH/T.O./2012-12 dated 07.03.2013:-*
>
> *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))*
>
> *The aforesaid authority also confirmed that the values of Ash content. Sulphur content and Btu are to be applied on Air Dry Basis (ADB). It has been further stated that several major importers like M/s. Agrawal Coal Corporation Pvt. Ltd., M/s. Gupta Coal (1) Pvt. Ltd., M/s. Binani Cement Ltd., M/s. Essar Steel India Ltd. And M/s MMTC expressed their agreement with the above formulae when asked as per DRI Letter dated 28.02.2013 issued vide F. No. DRI/AZU/INT-01/20:3. During investigation, M/S. JSW Steel Limited submitted Certificate of sampling and analysis report No. C/IGI/C&C36862/12-13/159365 dated 05.10.2012 with addendum dated 09.10.2012 issued by Inspection Agency at the port of discharge for B/E No. 8004800 dated 21.09.2012 wherein again the volatile matter limit (on dry. Mineral-matter free basis) and calorific value limit (on a moist, mineral-matter free basis) were not mentioned. Accordingly when the said parameters were calculated as per formulae mentioned above, the Volatile Matter (on dry, mineral-matter-free basis) worked out to be more than 14% and Gross Calorific Value (on moist, mineral-matter-free worked out to be more than 5833 kcal/kg as detailed in para 10 above. The values of fixed carbon content and ash content used in above formulae have not been adjusted for SO3 free basis (as prescribed by ASTM 388) however it was stated that the effect of non-adjustment (with reference to SO3) of values of fixed carbon content and ash content in bituminous coal would be negligible on both*

volatile matter (on dry, mineral matter free basis) and calorific value limit (on moist, mineral matter free basis) and would not impinge adversely on the interest of the importers, besides the calorific values in respect of coal consignment as calculated in respect of the coal imported were not so very close to the figure of 5833 kcal/kg (were as high as 6269.50 and 6387.26), nor their volatile matter content percentage so very close to 14% (were as high as 38.13% and 40.09%)to make any consequence to the said calculations. Shri Arvind their GM (Commercial) in his statements recorded during the investigation accepted that the formula adopted as above is correct as per the ***"Coal Production and Preparation from the website downloaded Report'***
https://www.cia.gov/cneaf/coal/page/surveys/eia/ainst.pdf and that as per above formulae and definition of Customs Tariff it seems that the coal imported by them meets the parameters of Bituminous Coal. He only contended that they have imported steam coal for generation of electricity for which purpose the benefit of Notification has been extended to them.

51. I observe that the notice has neither challenged the aforesaid calculation of volatile matter limit (on dry, mineral-matter free basis) and calorific value limit (on a moist, mineral-matter free basis) of the coal imported by them during the course of investigation nor in the submissions given and is mainly contesting the notice on grounds that steam coal is a form type of bituminous Coal. Reliance was placed on Britannia Encyclopedia, opinion of an Expert Wendy Lyons Sunshine on about energy website. US Geological Survey and World coal institute to state that steam coal is a form of bituminous Coal. They have contended that the department has used the formulae for calculation of calorific value of coal as per the ASTM standards but ignored that there is no classification or mention of steam coal or coking coal in the said standards under the head of bituminous coal It was pressed by the noticee that steam coal is a specie of the generic Bituminous Coal as per the report issued by US Geological survey and that Customs tariff of various countries (examples of US Russian Fed. Bermuda and Nigeria given) includes steam coal in Bituminous coal As regards the Tariff structure in Indian Customs Tariff is concerned their submission is that human error cannot be ruled out while adopting the eight digit classification separating steam coal from Bituminous Coal and enlisting it under "other coal is coal other than bituminous coal.

52. It may be seen that the Tariff structure of the aforesaid countries also did not per se mention Steam Coal under the heading Bituminous Coal as regards the above submissions based on the external material. I am of the opinion that recourse to such external material has to be made only if the entries themselves are capable of being interpreted in more than one way which is not the case here. These materials have no legal validity when in the Customs Tariff Act, the bituminous coal has been clearly defined. The classification of steam coal under the heading other coal in the Indian Tariff act has been referred to by the importer as "fallacious and an obvious drafting, error" in their reply. This submission is entirely unacceptable as the classification of goods imported shall necessarily have to be carried out as per the Indian Tariff Act as prevalent on the date of

import and it is absurd on their part to refer the tariff entry as 'an error' The application of Rule 3 (a) and (c) of the Interpretative Rules for classification are not relevant as the coal imported, having covered by the criteria laid down under sub heading note 2. Falls under heading 27011200 However for the sake of discussions, this plea has been examined in the light of the submission of the noticee that sub heading 2701 1920 is more specific of the two sub-headings 27011200 and 27011920 and should be adopted for classification of coal imported in terms of Rule 3 (a) of the said Rules and further that by application of interpretative rule 3(c) the later sub heading vis-à-vis 2701 1200 would prevail. Rule 3(a) of the said Rules says that when by application of Rule 2(b) or for any other reason, goods are, prima facie classifiable under two or more headings, the heading which provides the most specific description shall be preferred to headings providing a more general description. There is no denial from the fact that (i) the coal imported fulfilled the twin parameters as provided under the definition of Bituminous coal falling under sub heading 2701 12 (ii) there is no sub heading note to state that the above definition applies to sub heading 2701 19 under which steam coal falls and thus there is no question of having prima facie two sub headings meriting equal consideration to examine further as to which one is specific or which one is general The coal imported in the light of passing the twin tests is appropriately classifiable under sub heading 2701 1200 under the Tariff and there is no other sub heading in the subject case, more or most appropriate. Rule 3(c) is in any case not applicable again for the same reason. Rule 6 of the said Rules stipulates that for legal purposes, the classification of goods in the sub headings of a heading shall be determined according to the terms of those sub headings and any related Sub heading Notes and mutatis mutandis, to the above Rules, on the understanding that only sub headings at the same level are comparable. In the light of the same, I conclude that the coal imported under the above referred two Bills of entry conformed to the definition of 'Bituminous coal' given in sub-heading Note 2 of Chapter 27 and thus classifiable under heading 2701 1200."

Impugned Order dated 14.03.2014 in C/87757/2014:

"25. *The noticee has argued the department has erred in incorrectly applying the formula, which the department borrowed from "eai" website for converting the test results done at the load port, results of which have been expressed on an 'Air Dried' Basis (ADB) and/or on 'As Received' Basis (ARB), to MMMF basis. It is observed that as per ASTM Standards* ***(D388-12)*** *Coals shall be classified by rank in accordance with Table-1 pertaining to Classification of Coals by Rank. The technical characteristics of Coals mentioned in the said Table-1 of ASTM Standards* ***(D388-12)*** *are the same as mentioned in similar Table-1 mentioned in Geological Survey Circular 891 of Coal Resource Classification System of the U.S. Geological Survey. Both these Tables have adopted Gross Calorific Value (GCV) limits (moist, mineral-matter-fee basis) for arriving at correct classification of coal. It has been categorically mentioned in these technical literatures that basis of classification of coal is according to fixed carbon and gross calorific value calculated to the mineral-matter-free basis. The higher rank coals are classified*

according to fixed carbon on the dry-basis and the lower-rank coal are classified according to gross calorific value on the moist basis under laboratory conditions. It has been mentioned in all the technical literatures, which have come across, including technical literatures published by the ASTM, USGS, the World Coal Association that gross calorific value (GCV) is the higher heating value (HHV) and it is the calorific value under laboratory conditions, whereas the net calorific value is the lower heating value (LHV) and it is the useful calorific value in the boiler plant. Since testing by all the accredited agencies is in laboratory conditions, any reference to the GCV made in the certificates has to be construed as a reference made to calorific value for all practical and technical purposes. Even on perusal of the contract for supply of coal, entered into by the noticee with their overseas supplier, it would reveal that the contract refers to gross calorific value (GCV) for the purpose of calculation of calorific value. From various expressions and equations adopted in ASTM standards for the purpose of conversion also refer to calorific value in the context of gross calorific value. Also, the load-port certificate presented by the noticee before the authority indicates that gross calorific value has been obtained while arriving at various parameters like air-dried basis, as-received basis etc. To arrive at values of Ash, sulphur and BTU they have to be applied on ADB and not on ARB. It would be amply clear that while as-received hasis would include total moisture, air-dried basis would include only inherent moisture. ASTM standard D388-12 specifically describes that to arrive at mineral-matter-free basis, all the quantities are to be taken on the inherent moisture basis only. Therefore, value of ash, sulphur content and Btu has to be applied on the ADB value and not ARB value.

xxx *xxx* *xxx* *xxx*

26.1. *The contention of the noticee is not acceptable as, though the customs tariff has not defined steam coal, it certainly has defined bituminous coal. If the coal imported satisfies the twin criteria as laid down in sub heading note 2 of chapter 27 which defines what constitutes a bituminous coal, then the coal has to be classified as bituminous coal only. Further as discussed in earlier paras the tariff structure is such that only if the imported coal cannot be classified as bituminous coal, then only subsequent residuary tariff entries can be considered for classification. If we apply the above principle to the facts of the present case, without any Iota of doubt, it can be concluded that the most appropriate tariff nomenclature adopted in the Customs Tariff in respect of the impugned goods is "Bituminous Coal" which is classifiable under Tariff item 270112 00. Accordingly, I have to hold that the correct classification of the goods under importation in the instant case is Tariff item 2701 12 00 and not Tariff item 2701 19 20. It is observed in Oswal Agro Mills Ltd. v. CCE [1993 (66) E.L.T. 37 (S.C.)], the Hon'ble Apex Court has considered the classification of toilet soap, the competing classification being "Soap, household and laundry" and "Soap, other sorts". I am not concerned with the outcome of the decision which was classification under "soaps, household and laundry" but the ratio/principle laid down by the Hon'ble Apex Court is very relevant. While examining the matter, the Apex, Court held that "The provisions of the Tariff do not determine the relevant entity of the goods. They deal whether and*

under what entry, the identified entity attracts duty. The goods are to be identified and then to find the appropriate heading, sub-heading under which the identified goods/products would be classified. To find the appropriate classification description employed in the tariff nomenclature should be appreciated having regard to the terms of the headings read with the relevant provisions or statutory rules of interpretation put up thereon. For exigibility to excise duty, the entity must be specified in positive terms under a particular tariff entry. In its absence be deduced from a proper construction of the tariff entry. There is neither intendment nor equity in a taxing statute. Nothing is implied. Neither can we insert nor anything can we delete but it should be interpreted and construed as per the words the legislature has chosen to employ in the Act or Rules. There is no room for assumption or presumptions. The object of the Parliament has to be gathered from the language used in the stature."

xxx xxx xxx xxx

27.1. *In order to be eligible to an exemption given under any entry, imported goods have to confirm to the description given in the column 2, of the said table. From the above wording of notification, it is crystal clear that Sr. No. 123 grants concessional rate of duty for Steam coal only. It is already discussed at length in above para that the coal imported by the noticee do not qualify as steam coal and in fact as the coal imported by them satisfies the parameters given in chapter subheading note 2 of chapter 27 of Tariff Act in respect of Bituminous Coal, the same has to be treated as bituminous coal and not steam coal. Therefore, I have to hold that the noticee is not eligible for benefit of the notification as per sr. no. 123 of the notification which is specifically available to steam coal as the coal imported by them is correctly termed as Bituminous Coal. However, the noticee is eligible for benefit of above notification as per S. No. 124, which also grants concessional rate of duty, as the said entry specifically covers the coal imported by the noticee.*

27.2. *In the present case, the noticee was well aware of the specifications with respect to its calorific value and volatile matter as revealed from the Load port test reports. As per the test report i.e Certificate of Sampling and Analysis, both calorific value (ARB) and volatile -matter (ADB) were found to be more than 5833 kcal/kg and exceeding 14 % respectively. Further the official of the noticee Shri AravindRajagopalan, General Manager (Commercial) in his statement recorded under Section 108 of Customs Act, 1962 clearly stated that he accepted the formulae to be correct and that the coal imported met the chemical parameters in bituminous coal. It is very much clear that price for the import of coal is decided on the basis of above specifications apart from others as shown in the Certificate of Sampling and Analysis. The price of the imported coal is payable on the basis of specifications of sulphur moisture, ash content Volatile Matter (ADB) and Gross Calorific Value (ARB). The noticee has imported coal as per the specifications mentioned in Certificate of Sampling and Analysis and it has been conclusively established from the specifications appearing in the Certificates of Sampling and Analysis, that the coal imported by them are having volatile matter limit (on a dry, mineral-matter-free basis) exceeding 14% and a*

calorific value limit (on a moist, mineral-matter-free basis) equal to or greater than 5,833 kcal/kg. In the case on hand, the department has not made a mere assertion that the imported coal is classifiable under bituminous coal but also has shown elaborate evidences on the basis of load port certificates as to how the coal imported has met the definition of bituminous coal as defined in the tariff. In other words, the department has discharged its burden of classification."

Impugned Order dated 25.04.2014 in C/88493/2014:

"34.2 I have considered these submissions carefully I find that the main contention of the Importer in this case is that the Revenue has taken inherent moisture in coal on Air Dried Basis(ADB) whereas it should. have been taken on As Received Basis(ARB) It is also the contention of the notice that the formulae applied in this case is not universal and are not applicable to the coal produced in all countries I have also gone through the publication "Coal Resource Classification system of the U.S. Geological Survey published by U.S. Department of the interior referred by Stewart Surveyors and Assayers Pvt Ltd. The said publication contain certain definitions which is re-produced below-

Dry mineral matter free basis- *A type of calculated analysis value of a coal sample expressed as if the total moisture and mineral matter had been removed.*

Moist, mineral-matter-free basis- *A theoretical analysis calculated from basic analytical data and expressed as if the mineral matter had been removed and the natural moisture retained. Used in determining the rank of coal.*

Moisture content-*The percentage of moisture (water) in coal. Two types of moisture are found in coal, namely, free or surface moisture removed by exposure to air, and inherent moisture entrapped in the coal and removed by heating to 220°F.*

The said publication in formulae for calculation for conversion to Moist, mineral-matter-free-BTU also categorically states that "above quantities are all on the inherent moisture basis. This basis refers to coal containing its natural inherent moisture or bed moisture but not including water adhering to the surface of the coal."

xxx xxx xxx xxx

34.9 I Find that in the load port Certificate of Sampling and Analysis Report issued by two different Testing Agencies Gross calorific value on both ARB basis and ADB basis are given which has been reproduced at para 33.4.1 find that the ADB value in both the cases will be exactly the same as given in Analysis report if we convert Gross Calorific Value on ARB Basis into Gross Calorific Value on ADB basis applying the above mentioned formulae. Therefore I come to the conclusion that independent surveyors in their test reports have also used the same formulae to arrive at GCV on ADB basis from ARB basis hence the formulae suggested by DRI and confirmed by the Joint

Director, Customs Laboratory, Jawaharlal Nehru Customs House, Nhava Sheva, Raigad, Maharashtra vide a letter F.No: JNCH/T.O./2012-12 dated 07.03.2013 is an universal formulae for application in matter of coal and not mere opinion of any person.

34.10 Further both the Certificate of Sampling and Analysis submitted by the Notice have certified that the tests were conducted as per ASTM Standard Method. which is a universal testing method and apply to the coal mined anywhere in the world. Hence I reject the contention of the Notice that formula for arriving at GCV on Moist mineral matter free basis can not be applied in their case and is applicable only for coal mined in USA

*35. In view of the above discussions and findings, **47000 MTs** of Coal, imported vide Bills of Entry No: 7564900 dated 02.08.2012 and 8960556 dated 07.01.2013 has to be held as 'Bituminous Coal' classifiable under Tariff item No. 2701 1200 of the customs Tariff and chargeable to duty accordingly."*

Impugned Order dated 29.04.2014 in C/88495/2014:

"36.5 I find that as per the literature 'Coal Production and Preparation Report' downloaded from the website https://www.ela.gov/cneaf/ coal/page/surveys/eia7ainst.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))

36.6. I find that the Joint Director, Customs Laboratory, Jawaharlal Nehru Customs House, Nhava Sheva, 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 the 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 both the consignments imported vide above said bills of entry by the Notice 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 after applying the formula as mentioned above.

36.7 I find that the importer, in their load port Certificate of Sampling and Analysis Report issued by different Testing agencies, submitted both ARB as well as ADB value to the Customs I also find that all the value except Total Moisture have been given on ADB basis in both the bills of entry. 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 Bituminus Coal. Moreover when only ADB value mentions 'Inherent moisture value' in load port analysis report, there is no reason why the same cannot be taken for calculation.

36.8 I find that DRI, Zonal Unit, Ahmedabad in para 5 of their letter dated 28.02.2013 issued from F.No.DRI/AZU/INT-01/2013 and relied upon by the investigation in this case has also suggested the formulae for inter conversion of 'Air Dry basis', 'Dry Basis' and 'As obtained Basis' Received was from website http://www.bti-which europe.eu/downloads/Coal ConversionFactsCalculations.pdf, which is as under:-

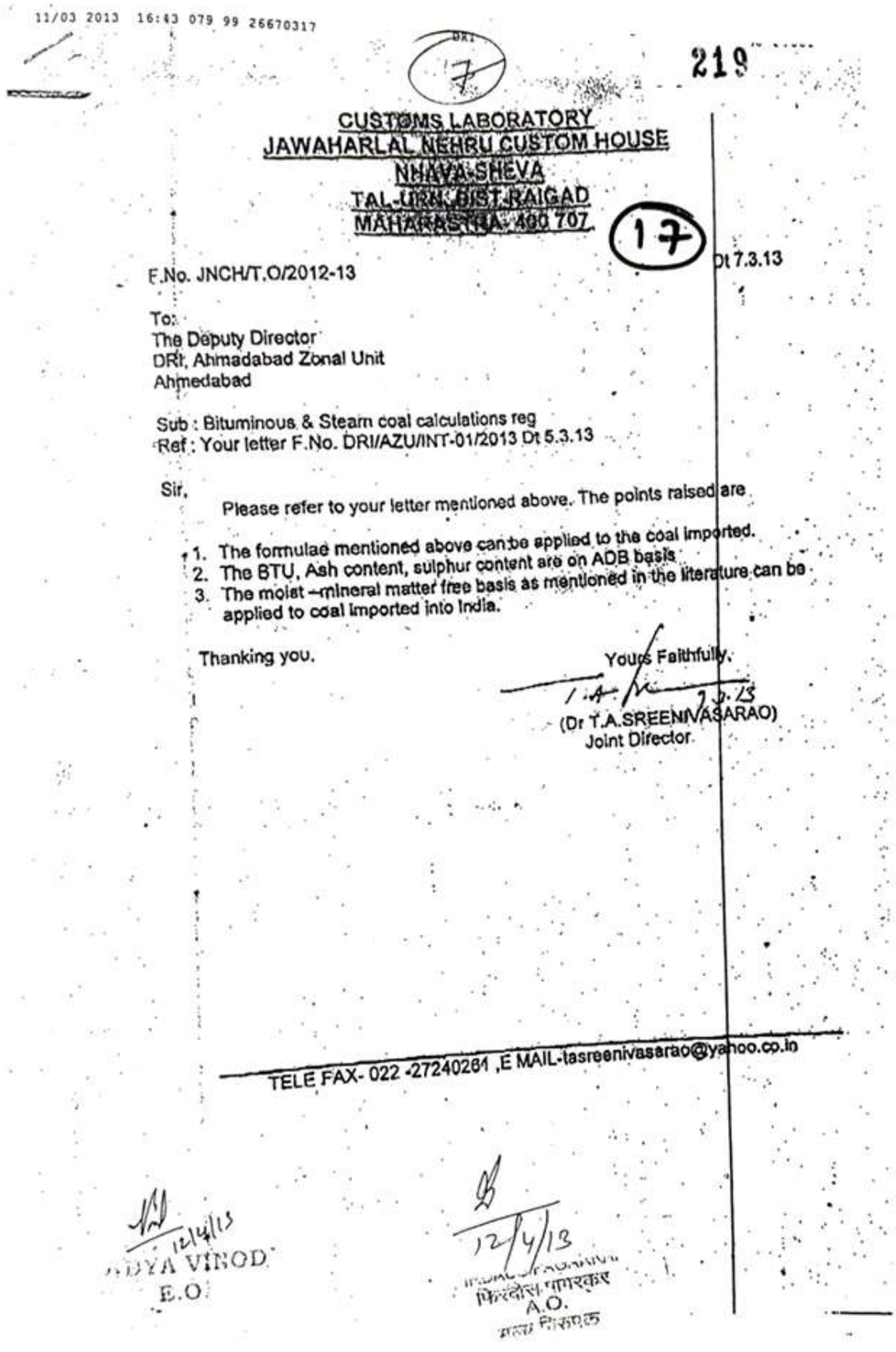
To obtain	*Air Dry*	*Dry Basis*	*As Received*
Multiply			
AR by:	*(100-Im%)/(100-Tm%)*	*100/(100-Tm%)*	*-*
AD		*100/(100-Im%)*	*(100-Tm%)/ (100-Im%)*
DB:	*(100-Im%)/100*	*-*	*(100-Tm%)/100*

Where Im: Inherent Moisture
Where Tm: Total Moisture
[For DAF, multiply DB by 100/(100-A)]

36.9 I Find that in the load port Certificate of Sampling and Analysis Report issued by Pt. Mitra S. K. Analisa Testama, Gross calorific value on both ARB basis and ADB basis are given which has been reproduced at para 36.4.1 find that the ADB value in this case will be exactly the same as given in Analysis report if we convert Gross Calorific Value on ARB Basis into Gross Calorific Value on ADB basis applying the above mentioned formulae. Therefore I come to the conclusion that independent surveyors in their test reports have also used the same formulae to arrive at GCV on ADB basis from GCV on ARB basis hence the formulae suggested by DRI and confirmed by the Joint Director, Customs Laboratory, Jawaharlal Nehru Customs House, Nhava Sheva, Raigad, Maharashtra vide a letter F.No: JNCH/T.O./2012-12 dated 07.03.2013 is an universal formulae for application in matter of coal and not mere opinion of any person.

36.10 Further both the Certificate of Sampling and Analysis submitted by the Notice have certified that the tests were conducted as per ASTM Standard Method. Which is a universal testing method and apply to the coal mined anywhere in the world. Hence reject the contention of the Notice that formula for arriving at GCV on Moist mineral matter free basis cannot be applied in their case and is applicable only for coal mined in USA."

9.1 The letter of the Joint Director, CRCL Customs Laboratory, Jawaharlal Nehru Custom House (JNCH), Nhava Sheva dated 07.03.2013 and the letter of DRI, Ahmedabad dated 28.02.2013 for adopting a formula for conversion of figures relating to coal analysis and testing results, when received on different basis are also extracted and given below, as on these basis the impugned orders were passed by the learned Commissioners are extracted and given below:



11/03 2013 16:43 079 99 26670317

DRI

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CUSTOMS LABORATORY
JAWAHARLAL NEHRU CUSTOM HOUSE
NHAVA SHEVA
TAL-URAN, DIST.RAIGAD
MAHARASHTRA-400 707

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F.No. JNCH/T.O/2012-13 Dt 7.3.13

To:
The Deputy Director
DRI, Ahmadabad Zonal Unit
Ahmedabad

Sub : Bituminous & Steam coal calculations reg
Ref : Your letter F.No. DRI/AZU/INT-01/2013 Dt 5.3.13

Sir,

Please refer to your letter mentioned above. The points raised are

1. The formulae mentioned above can be applied to the coal imported.
2. The BTU, Ash content, sulphur content are on ADB basis
3. The moist –mineral matter free basis as mentioned in the literature can be applied to coal imported into India.

Thanking you.

Yours Faithfully,

7.3.13

(Dr T.A.SREENIVASARAO)
Joint Director

TELE FAX- 022 -27240261 ,E MAIL-tasreenivasarao@yahoo.co.in

12/4/13
VIDYA VINOD
E.O

12/4/13
A.O.

DRI

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- 4 MAR 2013

DIRECTORATE OF REVENUE INTELLIGENCE
ZONAL UNIT
Rupen Bungalow, Jain Merchant Society,
Near Mahalaxmi Cross Road, Paldi, Ahmedabad: 380 007.
Phone: 26611053 Fax: 26670317

F.No.DRI/AZU/INT-01/2013 Dated: 28.02.2013

To
The Director General
Directorate of Revenue Intelligence
New Delhi.

Sir

Sub: Short-levy of duty on *Bituminous coal* (CTH-27011200) misclassified as *Steam coal* (CTH-27011920).

Reference is invited to ongoing Inquiry / Investigation being conducted against certain importers of *Coal* regarding short-levy of duty on *Bituminous coal* (CTH-27011200) owing to its misclassification as *Steam coal* (CTH-27011920) and the Alert Circular No.03/2013, dated 30.01.2013 issued by DRI HQ., New Delhi, on the above subject.

2. As per sub-heading note (2) of the Chapter 27 ***"bituminous coal"*** ***means coal having volatile matter limit (on a dry, mineral-matter-frve basis) exceeding 14% and a calorific value limit (on a moist, mineral-matter-free basis) equal to or greater than 5,833 kcal/kg.*** However, it is noticed from the certificate of sampling and Analysis issued by the load port inspection agencies / surveyors do not always reflect the value of *Volatile matter on a dry, mineral-matter-free basis* and *Calorific value limit on a moist, mineral-matter-free basis*. In most of the cases these values are mentioned either on Air Dry basis or As Received basis.

3. (i) While ARB (As Received basis) would include *Total moisture*, Air-Dried (AD) *includes inherent moisture only*. Likewise Dry basis (DB) would exclude all moisture and Dry Ash free (DAF) excludes moisture & Ash;

(ii) The term *moist* in *"moist, mineral-matter free basis"* refers to coal containing its natural inherent moisture but not including visible water on the surface of the coal (as defined in Geological Survey Circular 891 of Coal Resources classification system of the U.S.Geological Survey (copy enclosed));

(iii) The term *mineral-matter free basis*, in *"moist, mineral-matter free basis"* refers to *moist, mineral-matter free* Btu content = 100 (Btu-50 S)/[100-(1.08A+0.55 S)] where *Btu=gross calorific value per pound*; A=ash content percentage by weight; and S=sulfur content percentage by weight;

4. Keeping in view the above mentioned terminology, in order to arrive at *Volatile matter on a dry, mineral-matter-free basis* and *Calorific value limit on a moist, mineral-matter-free basis*, this office has adopted following formulae which are authenticated by Coal Production and Preparation Report (Instructions) attached to Coal Production

VIDYA VINOD
E.O.

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किरदोस मास्टर
A.O.

DRI 85348 P.002

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Report (Form EIA -7A) retrieved from website www.eia.gov/cneaf/coal/page/surveys/coal7a.html ~~(copy enclosed)~~.

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

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

(iii) Moist, mineral – matter free Btu content = 100 (Btu-50 S)/[100-(1.08A+0.55 S)].

Where,
Btu=gross calorific value per pound;
M= moisture content percentage by weight;
A=ash content percentage by weight; and
S= sulfur content percentage by weight
FC= fixed carbon content percentage by weight;
Btu = Kcal/kg x 1.800001 (as per website www.endmemo.com/sconvert/kcal_kgcbtu_lbc.php)

5. It is also necessary to point out that in most of the load port certificates / reports *Calorific value* has been mentioned in *Kcal / kg.* and therefore to work the above mentioned formulas such Kcal / kg. value has to be first converted in *Btu/pound* by applying the formula Kilocalorie / Kilogram x 1.800001 = Btu / pound (as ascertained from website www.endmemo.com/sconvert/kcal_kgcbtu_lbc.php). Further for the purpose of inter-conversion of *'Air Dry basis'*, *'Dry basis'* and *'As Received basis'* the following formulae obtained from the website www.bti-europe.eu/.../CoalConversionFacts Calculations.pdf are to be adopted.

To obtain	*Air Dry*	*Dry basis*	*As Received*
Multiply			
AR by:	*(100 - Im%) / (100-Tm%)*	*100 / (100 - Tm%)*	*(100 - Tm%) / (100-Im%)*
AD by:	-	*100 / (100 - Im%)*	*(100 - Tm%) / 100*
DB by:	*(100-Im%) / 100*	-	

Where Im = Inherent Moisture
Where Tm = Total Moisture
[For DAF, multiply DB by 100 / (100-A)]

6. Several major importers like MMTC, M/s. Adani Enterprises Ltd., M/s. Agrawal Coal Corporation Pvt. Ltd., M/s. Gupta Coal (India) Pvt. Ltd., M/s. Binani Cement Ltd., M/s. Essar Steel India Ltd. etc. have expressed their agreement with the aforesaid formulae in their statements tendered under section 108 of the Customs Act, 1962.

7. Needless to say that major net effect of these formulae is that the cases of Calorific Value marginally less than 5833 Kcal / kg. on ARB or ADB would get covered under the category of *Bituminous coal.*

8. The D.G. may like to circulate these to the field formations for the sake of information and uniformity.

Yours faithfully

(R.K.Singh)
Additional Director General

Encl: As above.

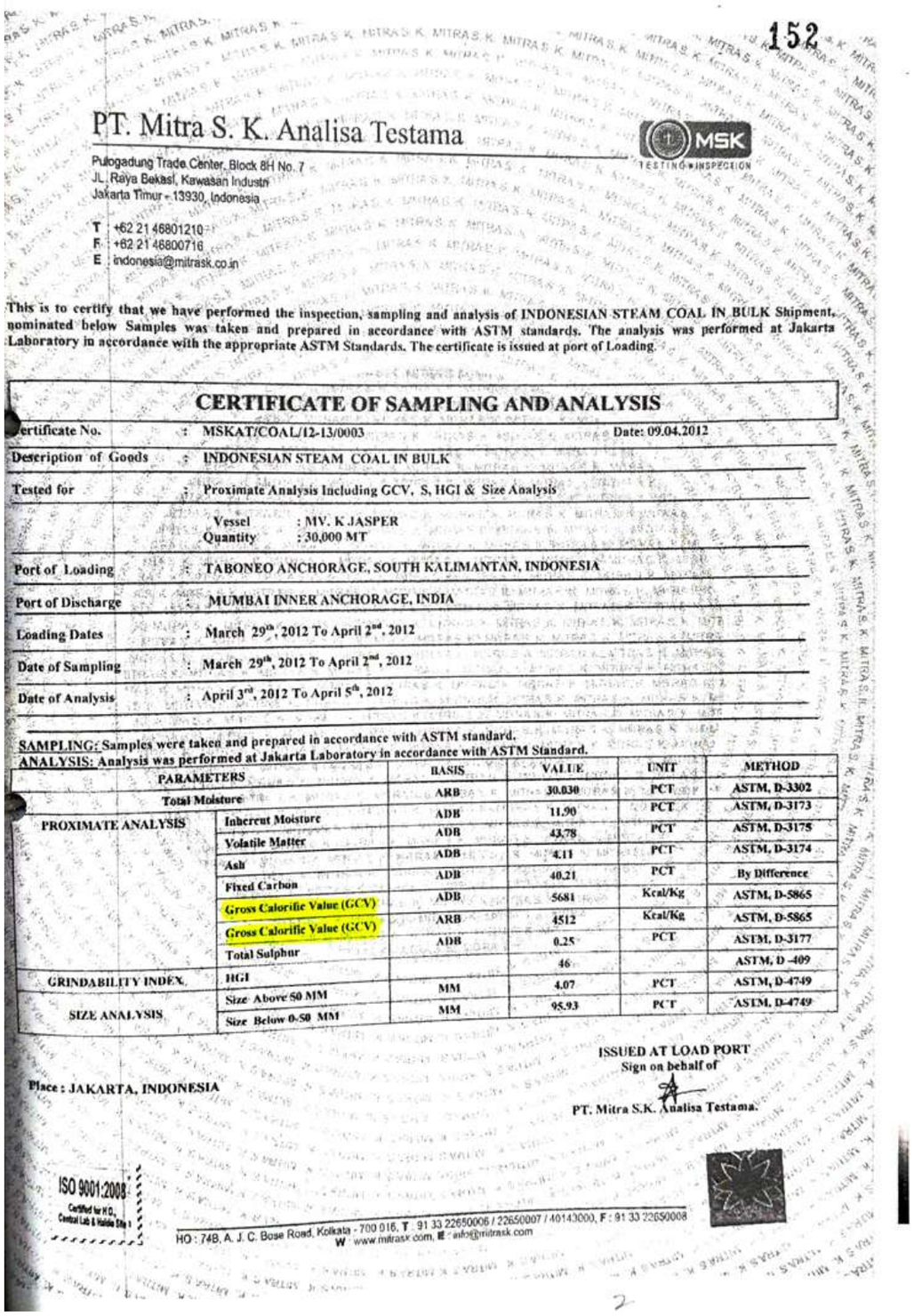
Copy to :-
The Commissioner of Customs (Import),
Mumbai.

14/4/13
VIDYA VINOD
E.O.

12/4/13
A.O.

The Load Port certificates in respect of eight B/Es covering the impugned goods imported in bulk in respective vessels, providing various parameters on analysis and testing of samples of coal as submitted by the appellants are also extracted and given below:

Reference: Appeal No. C/88495/2014 & B/E No. 6533813 dated 13.04.2012 Bill of Lading No. 01/BJM-IND/IV/2012 dated 02.04.2012 & Vessel MV K. Jasper



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PT. Mitra S. K. Analisa Testama

MSK TESTING • INSPECTION

Pulogadung Trade Center, Block 8H No. 7
JL. Raya Bekasi, Kawasan Industri
Jakarta Timur - 13930, Indonesia

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F : +62 21 46800716
E : indonesia@mitrask.co.in

This is to certify that we have performed the inspection, sampling and analysis of INDONESIAN STEAM COAL IN BULK Shipment, nominated below Samples was taken and prepared in accordance with ASTM standards. The analysis was performed at Jakarta Laboratory in accordance with the appropriate ASTM Standards. The certificate is issued at port of Loading.

CERTIFICATE OF SAMPLING AND ANALYSIS

Certificate No. : MSKAT/COAL/12-13/0003 Date: 09.04.2012

Description of Goods : INDONESIAN STEAM COAL IN BULK

Tested for : Proximate Analysis Including GCV, S, HGI & Size Analysis

Vessel : MV. K JASPER
Quantity : 30,000 MT

Port of Loading : TABONEO ANCHORAGE, SOUTH KALIMANTAN, INDONESIA

Port of Discharge : MUMBAI INNER ANCHORAGE, INDIA

Loading Dates : March 29th, 2012 To April 2nd, 2012

Date of Sampling : March 29th, 2012 To April 2nd, 2012

Date of Analysis : April 3rd, 2012 To April 5th, 2012

SAMPLING: Samples were taken and prepared in accordance with ASTM standard.
ANALYSIS: Analysis was performed at Jakarta Laboratory in accordance with ASTM Standard.

PARAMETERS		BASIS	VALUE	UNIT	METHOD
Total Moisture		ARB	30.030	PCT	ASTM, D-3302
PROXIMATE ANALYSIS	Inherent Moisture	ADB	11.90	PCT	ASTM, D-3173
	Volatile Matter	ADB	43.78	PCT	ASTM, D-3175
	Ash	ADB	4.11	PCT	ASTM, D-3174
	Fixed Carbon	ADB	40.21	PCT	By Difference
	Gross Calorific Value (GCV)	ADB	5681	Kcal/Kg	ASTM, D-5865
	Gross Calorific Value (GCV)	ARB	4512	Kcal/Kg	ASTM, D-5865
	Total Sulphur	ADB	0.25	PCT	ASTM, D-3177
GRINDABILITY INDEX	HGI		46		ASTM, D -409
SIZE ANALYSIS	Size Above 50 MM	MM	4.07	PCT	ASTM, D-4749
	Size Below 0-50 MM	MM	95.93	PCT	ASTM, D-4749

ISSUED AT LOAD PORT
Sign on behalf of
PT. Mitra S.K. Analisa Testama.

Place : JAKARTA, INDONESIA

ISO 9001:2008
Certified for H.O., Central Lab & Mobile Site

HO : 74B, A. J. C. Bose Road, Kolkata - 700 016, T : 91 33 22650006 / 22650007 / 40143000, F : 91 33 22650008
W : www.mitrask.com, E : info@mitrask.com

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Reference: Appeal No. C/88495/2014 & B/E No. 6837734 dated 16.05.2012
Bill of Lading No. 03&04/BKS-Ind/IV/2012 & Vessel MV Scarlet

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INSPECTORATE
A Bureau Veritas Group Company

Certificate No: 02 1002 120076

Date: May 7, 2012

CERTIFICATE OF SAMPLING AND ANALYSIS

Name of Vessel	:	MV. SCARLETT
Quantity	:	27,500.000 MT
Cargo Description	:	STEAM COAL IN BULK
Port of Loading	:	PELINDO PORT, PULAU BAAI, BENGKULU, WEST SUMATRA, INDONESIA
Port of Discharge	:	MUMBAI INNER ANCHORAGE, INDIA
Loading Period	:	APRIL 27, 2012 UP TO MAY 1, 2012

THIS IS TO CERTIFY that we have performed the inspection, sampling and analysis of the coal consignment nominated above. Samples were sampling in accordance with ASTM D2234/D2234M-07 during loading and analyzed as per ASTM standard methods.
The following results were obtained:

Specifications	Basis	Results
Total Moisture	ARB	: 30.33 Pct
Inherent Moisture	ADB	: 12.70 Pct
Ash Content	ADB	: 9.15 Pct
Volatile Matter	ADB	: 40.51 Pct
Fixed Carbon (By Difference)	ADB	: 37.64 Pct
Sulpur Content	ADB	: 0.40 Pct
Gross Calorific Value (Air Dried basis)	ADB	: 5795 Kcal/Kg
Gross Calorific Value (As received basis)	ARB	: 4625 Kcal/Kg
Hardgrove Index (HGI)		: 58
Sizing (0 - 50 mm)		: 90.65 Pct

Remarks : This certificate was issued to cover a lot of 27,500.000 MT being a part of 27,507.602 MT of Cargo loaded

Issued at Load Port

For and on behalf of,
PT. IOL Indonesia

This certificate is issued without prejudice. Our liability is limited to the exercise of due care and diligence. This certificate is not intended to relieve the buyers and sellers from their contractual obligations and only reflects our findings at the time, place and date of attendance only.

Reference: Appeal No. C/88493/2014 & B/E No. 7564900 dated 02.08.2012 Bill of Lading No. 02/BJM-IND/VII/2012 dated 20.07.2012 & Vessel MV Spar Ursa

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INSPECTORATE
A Bureau Veritas Group Company

Certificate No : 42-1002-121014

Date : July 24, 2012

CERTIFICATE OF SAMPLING AND ANALYSIS

Name of Vessel	:	MV. SPAR URSA
Quantity	:	22,000.000 MT
Cargo Description	:	STEAM COAL IN BULK
Port of Loading	:	TABONEO ANCHORAGE, SOUTH KALIMANTAN, INDONESIA
Port of Discharge	:	ANY PORT(S) IN INDIA
Loading Period	:	JULY 16, 2012 UP TO JULY 20, 2012

THIS IS TO CERTIFY that we have performed the inspection, sampling and analysis of the coal consignment nominated above. Samples were sampling in accordance with ASTM D2234/D2234M-07 during loading and analyzed as per ASTM standard methods. The following results were obtained :

Specifications	Basis	Results
Total Moisture	ARB	: 28.60 Pct
Inherent Moisture	ADB	: 11.12 Pct
Ash Content	ADB	: 8.99 Pct
Volatile Matter	ADB	: 41.93 Pct
Fixed Carbon (By Difference)	ADB	: 38.26 Pct
Sulpur Content	ADB	: 0.73 Pct
Gross Calorific Value	ADB	: 5758 Kcal/Kg
Gross Calorific Value	ARB	: 4626 Kcal/Kg
Hardgrove Index (HGI)		: 51
Sizing		
0 - 50 mm		: 91.20 Pct
Above 100 mm		: Nil

Remarks : This certificate was issued to cover a lot of 22,000.000 MT being a part of 55,000.000 MT of Cargo loaded.

Issued at Load Port

For and on behalf of,
PT. IOL Indonesia

JKT/250712

This certificate is issued without prejudice. Our liability in relation to the exercise of due care and diligence. This certificate is not intended to relieve the buyers and sellers from their contractual obligations and any reliance on findings in the sole, direct and several responsibility.

Reference: Appeal No. C/88493/2014 & B/E No. 8960556 dated 07.01.2013
Bill of Lading No. 02 dated 27.12.2012 & Vessel MV Densa Panther

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GC 57315

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Email: jakarta@geochemgroup.com

Ref.No.: PTII/GC/002/2013
Date : JANUARY 04, 2013

CERTIFICATE OF SAMPLING AND ANALYSIS

NAME OF VESSEL	: **MV. DENSA PANTHER**
COMMODITY	: INDONESIAN STEAM COAL IN BULK
LOADING PORT	: MUARA BANYUASIN, PALEMBANG SOUTH SUMATERA, INDONESIA
DISCHARGE PORT	: ANY PORT(S) IN INDIA
QUANTITY	: 25,000.00 MT
ATTENDING DATE	: DECEMBER 18 UP TO DECEMBER 27, 2012

Gross samples were taken during loading of vessel in accordance with ASTM Standard Methods. Sample were prepared and analyzed in accordance with ASTM Standard Methods and showed the following result:

SPECIFICATIONS (BASED ON ASTM STANDARDS)

PARAMETER	THE ACTUAL ANALYSIS RESULTS
Total Moisture (ARB)	31.89 %
Inherent Moisture (ADB)	16.20 %
Ash Content (ADB)	6.40 %
Volatile Matter (ADB)	41.80 %
Fixed Carbon (ADB)	35.60 %
Total Sulphur (ADB)	0.55 %
HGI	55
Gross Calorific Value (ADB)	5698 Kcal/Kg
Gross Calorific Value (ARB)	4631 Kcal/Kg
Size Crushed 0 - 50 mm	90 %
Above 75 MM Size Fraction	Nil
Less than 2 mm Size Fraction	12.15 %
AFT (IDT) (Reducing)	1220
FE2O3 IN ASH	8.09 %
SIO2 + AL2O3 IN ASH	76.61 %

ISSUED AT LOAD PORT

FOR PT. INDONESIA INSPEKSI
INDEPENDENT INSPECTION SURVEYOR

AUTHORISED SIGNATORY

This inspection / testing has been performed to the best of our ability and our responsibility is limited to proven negligence. This certificate, which is issued on conditions stipulated overleaf, affects our findings at the time and place of inspection / testing and does not relieve parties from their contractual obligations. Samples will be retained by us for a period of sixty days only, unless specific instructions to the contrary are received.

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No: 015468

Reference: Appeal No. C/87757/2014 & B/E No. 8189651 dated 11.10.2012 Bill of Lading No. BJM/INDIA/09/12 dated 01.10.2012 & Vessel MV Vijaya Nagar

RUD-4 (1/1)

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E-mail : bdgo...@geoservices.co.id

CERTIFICATE OF SAMPLING AND ANALYSIS OF COAL

THIS IS TO CERTIFY : that we have performed the inspection, sampling and analysis of coal shipment nominated below;
General analysis samples were taken during barge loading and total moisture samples were taken during loading to mother vessel.
Testing & analysis were performed at PT. Geoservices Banjarbaru Laboratory in accordance with the appropriate ASTM standard.

Vessel	:	MV. VIJAYANAGAR
Loading Port	:	Taboneo Anchorage, South Kalimantan, Indonesia
Discharge Port	:	Any Ports In India
Cargo	:	73,026 MT Of Steam Coal In Bulk
Date of Intervention	:	September 28 up to October 01, 2012

The following weighted average results were obtained :

GUARANTEED		Result	
Total Moisture	(As Received Basis)	7.86	%
Inherent Moisture	(Air Dried Basis)	3.82	%
Ash	(Air Dried Basis)	11.96	%
Volatile Matter	(Air Dried Basis)	42.68	%
Fixed Carbon	(Air Dried Basis)	41.54	%
Total Sulphur	(Air Dried Basis)	0.68	%
HGI		42	
Gross Calorific Value	(As Received Basis)	6403	kcal/kg
Size Crushed	0x50MM	96.70	%
	Above 75 MM	0.00	%
	Less Than 2 MM	13.02	%

Ash Fusion Temperature
- IDT 1430 Degree C

Signed for and on behalf of
PT. Geoservices

(Ade Nurdin)
Lab Manager
PT. GEOSERVICES
CAB. BANJARBARU

Issued at loadport
Date : October 04, 2012
Job No. : 07012.09038
Page 1 of 1

निवारक विभाग PREVENTIVE DEPTT. CUSTOM HOUSE, MARMAGOA

ORIGINAL

This Certificate is the true expression of our inspection findings and the results ... are generally accepted in the trade. It is ... and ... liability ... that it may not receive ... other contractual obligations ... limit as is payable under a mutually ... and due diligence of ... however ...

Reference: Appeal No. C/87757/2014 & B/E No. 7510536 dated 27.07.2012
Bill of Lading No. 01/MJ-IND/12 dated 16.07.2012 & Vessel MV Jay

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Ref.No.: PTII/GC/035/2012
Date : JULY 23, 2012

CERTIFICATE OF SAMPLING AND ANALYSIS

NAME OF VESSEL	: MV. JAY
COMMODITY	: STEAM COAL IN BULK
LOADING PORT	: MUARA SATUI ANCHORAGE, SOUTH KALIMANTAN, INDONESIA
DISCHARGE PORT	: ANY PORT(S) IN INDIA
QUANTITY	: 55,000.00 MT
ATTENDING DATE	: JULY 12 UP TO JULY 16, 2012

Gross samples were taken during loading of vessel in accordance with ASTM Standard Methods. Sample were prepared and analyzed in accordance with ASTM Standard Methods and showed the following result:

PARAMETERS	THE ACTUAL ANALYSIS RESULTS
Total Moisture (ARB)	30.27 %
Inherent Moisture (ADB)	13.25 %
Ash Content (ADB)	8.72 %
Total Sulphur (ADB)	0.46 %
Gross Calorific Value (ADB)	5662 Kcal/Kg
Gross Calorific Value (ARB)	4551 Kcal/Kg
Size (0-50 mm)	92.19 %
Size (Above 75 mm)	NIL
Size (0 – 2 mm)	11.82
AFT (IDT) (Reducing)	1265

ISSUED AT LOAD PORT

FOR PT. INDONESIA INSPEKSI
INDEPENDENT INSPECTION AGENCY

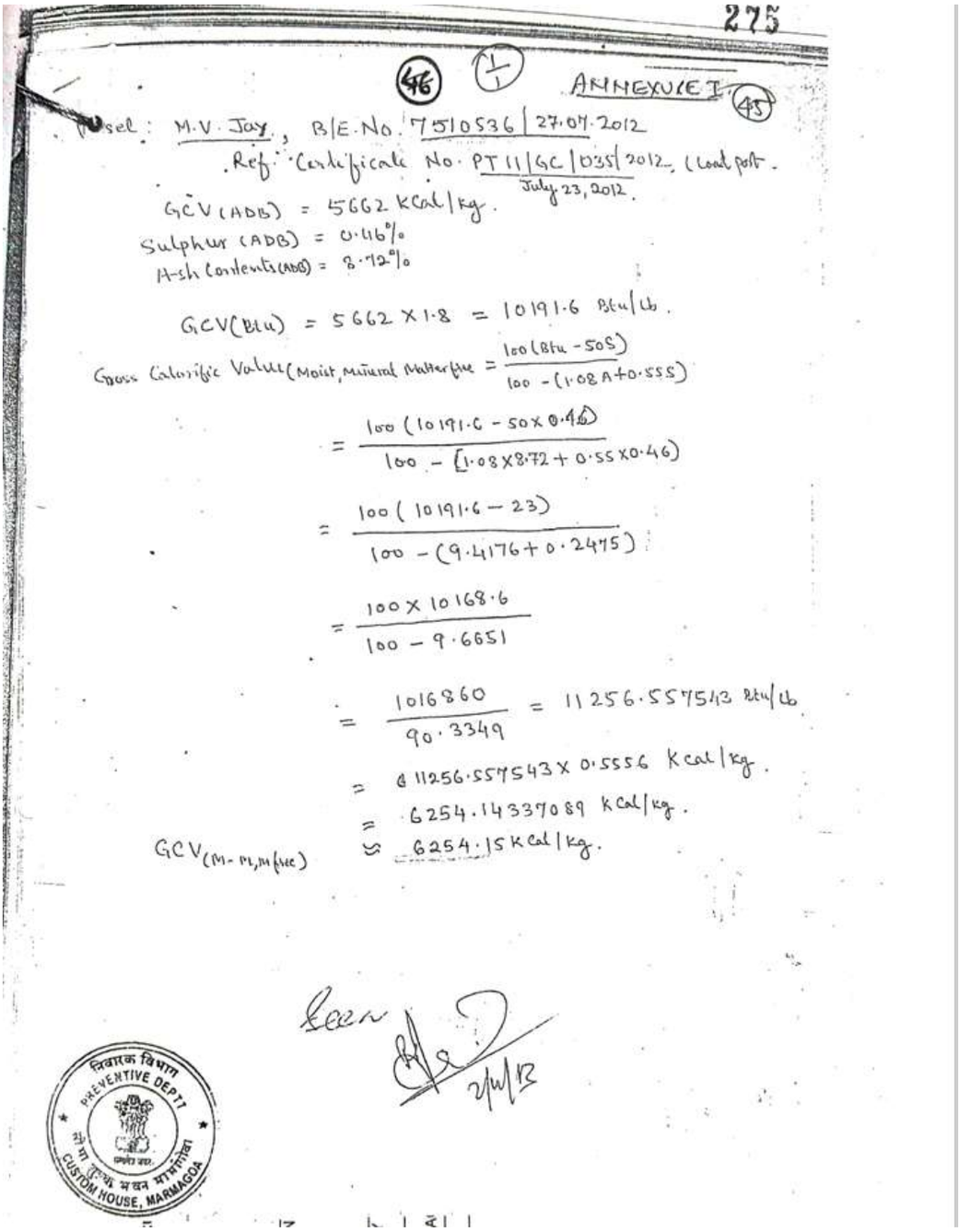
AUTHORISED SIGNATORY

This inspection / testing has been performed to the best of our ability and our responsibility is limited to proven negligence. This certificate, which is issued on conditions stipulated overleaf, reflects our findings at the time and place of inspection / testing and does not relieve parties from their contractual obligations. Samples will be retained by us for a period of sixty days only, unless specific instructions to the contrary are received.

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Nº 011450

Reference: Extract of the workings undertaken by the department to arrive at Gross Calorific Value (GCV) in B/E Nos. 7510536 dated 27.07.2012 & 7564900 dated 02.08.2012



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(46) (1/1) ANNEXURE I (45)

Vessel : M.V. Jay, B/E No. 7510536 | 27.07.2012

Ref: Certificate No. PT II/GC/035/2012, (Coal port. July 23, 2012.

GCV (ADB) = 5662 Kcal/kg.
Sulphur (ADB) = 0.46%
Ash Contents (ADB) = 8.72%

GCV (Btu) = 5662 × 1.8 = 10191.6 Btu/lb.

Gross Calorific Value (Moist, Mineral Matter free) = $\frac{100(Btu - 50S)}{100 - (1.08A + 0.55S)}$

$= \frac{100(10191.6 - 50 \times 0.46)}{100 - [1.08 \times 8.72 + 0.55 \times 0.46)}$

$= \frac{100(10191.6 - 23)}{100 - (9.4176 + 0.2475)}$

$= \frac{100 \times 10168.6}{100 - 9.6651}$

$= \frac{1016860}{90.3349} = 11256.557543$ Btu/lb.

$= 11256.557543 \times 0.5556$ Kcal/kg.

$= 6254.143370\,89$ Kcal/kg.

$GCV_{(M-M,M free)} \simeq 6254.15$ Kcal/kg.

Seen 2/11/12

निवारक विभाग PREVENTIVE DEPTT. सत्यमेव जयते CUSTOM HOUSE, MARMAGOA

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ANNEXURE-I (A)

Vessel M.V. Vijay Nagar, B/E No. 8189651 dtd. 11.10. (40) ANNEXURE II

Ref. Certificate Job No. 07012.09038 dated 0((47) (1 sheet)

GCV (ARB) = 6403 K Cal/kg.
Ash Content (ADB) = 11.96%
Sulphur (ADB) = 0.68%

GCV in Btu/Lb = 6403 X 1.8 = 11525.4

Gross Calorific Value. (GCV)

on Moist, Mineral Matter free $= \frac{100(Btu - 50S)}{100-(1.08A+0.55S)}$

$= \frac{100(11525.4 - 50\times0.68)}{100-(1.08\times11.96+0.55\times0.68)}$

$= \frac{100(11525.4 - 34)}{100-(12.9168+0.374)}$

$= \frac{100\times11491.4}{100-13.2908}$

$= \frac{1149140}{86.7092}$

= 13252.803624 Btu/Lb

= 13252.803624 X 0.5556 K Cal/kg.

= 7363.25769349

$GCV_{(M-m,m\ free)}$ = 7363.26 K Cal/kg.

Seen
2/4/13

निवारक विभाग
PREVENTIVE DEPTT.
सी.पी. मुरगाव पत्तन न्यास
CUSTOM HOUSE, MARMAGOA

Reference: Appeal No. C/86933/2014 & B/E No. 8004800 dated 21.09.2012 Bill of Lading No. 01/BKS-IND/IX/2012 dated 13.10.2012 & Vessel MV Trade Star

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Ref.No: PTII/GC/045/2012
Date : SEPTEMBER 17, 2012

CERTIFICATE OF SAMPLING AND ANALYSIS

NAME OF VESSEL	: **MV. TRADE STAR**
QUANTITY	: 27,500 MT
CARGO	: STEAM COAL IN BULK
PORT OF LOADING	: PELINDO PORT, PULAU BAAI, BENGKULU, WEST SUMATRA, INDONESIA
PORT OF DISCHARGE	: MUMBAI INNER ANCHORAGE, INDIA

Gross samples were taken during loading of vessel in accordance with ASTM Standard Methods. Sample were prepared and analyzed in accordance with ASTM Standard Methods and showed the following result:

SPECIFICATIONS	**RESULTS**
Total Moisture (ARB)	28.61 %
Inherent Moisture (ADB%)	13.92 %
Ash Content (ADB%)	9.85 %
Volatile Matter (ADB%)	39.9 %
Total Sulphur (ADB%)	0.38 %
Fixed Carbon (ADB%)	36.33 %
Gross Calorific Value (ARB)/ Kcal/Kg	4644 Kcal/Kg
HGI	57
Size (0-50mm)	92.20 %

The above report reflects our findings at the date, time, place & scope of intervention only and does not refer to any other matter and is issued without prejudice.

ISSUED AT PORT OF LOADING

FOR PT. INDONESIA INSPEKSI
INDEPENDENT INSPECTION AGENCY

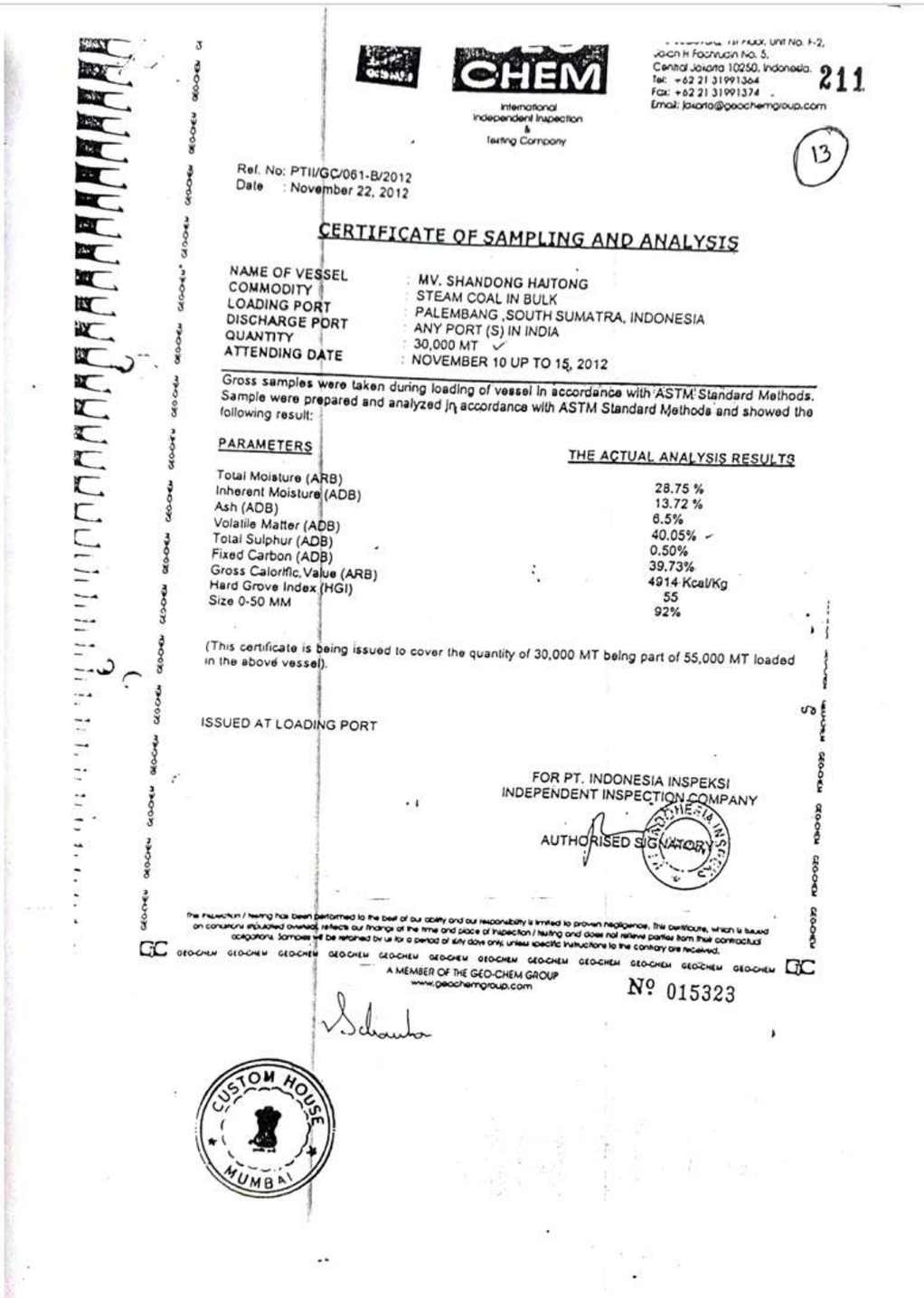
AUTHORISED SIGNATORY

This inspection / testing has been performed to the best of our ability and our responsibility is limited to proven negligence. This certificate, which is issued on conditions stipulated overleaf, reflects our findings at the time and place of inspection / testing and does not relieve parties from their contractual obligations. Samples will be retained by us for a period of sixty days only, unless specific instructions to the contrary are received.

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Nº 006050

Reference: Appeal No. C/86933/2014 & B/E No. 8600064 dated 21.11.2012 Bill of Lading No. 01/ATP-VSN/XI/2012 dated 15.11.2012 & Vessel MV Shandong Haitong



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Ref. No: PTII/GC/061-B/2012
Date : November 22, 2012

CERTIFICATE OF SAMPLING AND ANALYSIS

NAME OF VESSEL	: MV. SHANDONG HAITONG
COMMODITY	: STEAM COAL IN BULK
LOADING PORT	: PALEMBANG ,SOUTH SUMATRA, INDONESIA
DISCHARGE PORT	: ANY PORT (S) IN INDIA
QUANTITY	: 30,000 MT ✓
ATTENDING DATE	: NOVEMBER 10 UP TO 15, 2012

Gross samples were taken during loading of vessel in accordance with ASTM Standard Methods. Sample were prepared and analyzed in accordance with ASTM Standard Methods and showed the following result:

PARAMETERS	THE ACTUAL ANALYSIS RESULTS
Total Moisture (ARB)	28.75 %
Inherent Moisture (ADB)	13.72 %
Ash (ADB)	6.5%
Volatile Matter (ADB)	40.05% ✓
Total Sulphur (ADB)	0.50%
Fixed Carbon (ADB)	39.73%
Gross Calorific Value (ARB)	4914 Kcal/Kg
Hard Grove Index (HGI)	55
Size 0-50 MM	92%

(This certificate is being issued to cover the quantity of 30,000 MT being part of 55,000 MT loaded in the above vessel).

ISSUED AT LOADING PORT

FOR PT. INDONESIA INSPEKSI
INDEPENDENT INSPECTION COMPANY

AUTHORISED SIGNATORY

The inspection / testing has been performed to the best of our ability and our responsibility is limited to proven negligence. This certificate, which is issued on consignor's instructions/ overleaf, reflects our findings at the time and place of inspection / testing and does not relieve parties from their contractual obligations. Samples will be retained by us for a period of sixty days only, unless specific instructions to the contrary are received.

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Nº 015323

CUSTOM HOUSE MUMBAI

9.2 In the case before us, the contending classification of imported goods discussed in the impugned orders are either under CTI 2701 1920 of the First Schedule to the Customs Tariff Act, 1975 as claimed by the appellants, or, under CTI 2701 1200 of the said Schedule as determined in the impugned orders. Thus, it becomes clear that at the Chapter level and at the Heading level also, there is no divergence of opinion between the appellants and the department. However, at the Sub-heading level, there is difference of opinion among the department and the appellants. The dispute in classification therefore lies in the narrow compass of analysis of the disputed sub-headings under which the impugned goods are likely to be covered as per the Customs Tariff and then determining the appropriate Tariff Item under which the impugned product should be classified in terms of the customs statue. Therefore, in order to properly appreciate the intricacies involved in the classification of goods between different sub-headings, it would be worthwhile to have overall view of the product under dispute, its technical characteristics etc., for attempting to arrive at proper classification of the product under dispute.

9.3 The literature on *'Handbook of Coal Analysis' by Series - Editor Mr. James G.Speight* (Volume166) provide general understanding of the series of monographs on analytical chemistry and its applications involved in coal analysis including ranking. As generally understood, "Coal" is a solid, brittle, combustible, carbonaceous rock formed by the decomposition and alteration of vegetation by compaction, temperature and pressure, over a long geological time. The source of the vegetation is often mass and other low plant forms, but some coals contain significant amounts of materials that originated from woody precursors. It is often described as a black or brownish-black solid, combustible substance formed by the partial decomposition of vegetable matter without access to air. It is also understood as sedimentary rock composed of combustible matter derived from the partial decomposition of plant material. Coal is also used as a generic term applied to carbonaceous rocks that were formed by the partial or complete decomposition of vegetation. These stratified carbonaceous rocks are either solid or brittle and are highly combustible. Coal is of organic origin composed mainly of carbon, hydrogen and oxygen with lesser amounts of nitrogen, sulphur and other elements. Coal consists

of more than 50% by weight and more than 70% by volume of carbonaceous material including inherent moisture. It is used primarily as a solid fuel to produce heat by burning, which produces carbon dioxide, a greenhouse gas, along with sulphur dioxide. When coal is used in electricity generation, the heat is used to create steam, which is then used to power turbine generators. Modern Coal power plants utilize a variety of techniques to limit the harmfulness of the waste products and to improve efficiency of burning.

9.4 Coal is stratified as various types and each type has distinctly different properties from the other types. This could be seen from the classification of coal adopted by ASTM D388-12 in the document "Standard Classification of Coals by Rank" as per ASTM standards. The extract of the same is given below:

TABLE 1 Classification of Coals by Rank[A]

Class/Group	Fixed Carbon Limits (Dry, Mineral-Matter-Free Basis), %		Volatile Matter Limits (Dry, Mineral-Matter-Free Basis), %		Gross Calorific Value Limits (Moist,[B] Mineral-Matter-Free Basis)				Agglomerating Character
					Btu/lb		Mj/kg[C]		
	Equal or Greater Than	Less Than	Greater Than	Equal or Less Than	Equal or Greater Than	Less Than	Equal or Greater Than	Less Than	
Anthracitic:									
Meta-anthracite	98	...	...	2	...	...	...	...	nonagglomerating
Anthracite	92	98	2	8	...	...	...	...	
Semianthracite[D]	86	92	8	14	...	...	...	...	
Bituminous:									
Low volatile bituminous coal	78	86	14	22	...	...	...	...	commonly agglomerating[E]
Medium volatile bituminous coal	69	78	22	31	...	...	...	...	
High volatile *A* bituminous coal	...	69	31	...	14 000[F]	...	32.557	...	
High volatile *B* bituminous coal	...	...	...	...	13 000[F]	14 000	30.232	32.557	
High volatile *C* bituminous coal	...	...	...	...	11 500	13 000	26.743	30.232	
					10 500	11 500	24.418	26.743	agglomerating
Subbituminous:									
Subbituminous *A* coal	...	...	...	...	10 500	11 500	24.418	26.743	nonagglomerating
Subbituminous *B* coal	...	...	...	...	9 500	10 500	22.09	24.418	
Subbituminous *C* coal	...	...	...	...	8 300	9 500	19.30	22.09	
Lignitic:									
Lignite *A*	...	...	...	...	6 300[G]	8 300	14.65	19.30	
Lignite *B*	...	...	...	...	...	6 300	...	14.65	

[A] This classification does not apply to certain coals, as discussed in Section 1.
[B] Moist refers to coal containing its natural inherent moisture but not including visible water on the surface of the coal.
[C] Megajoules per kilogram. To convert British thermal units per pound to megajoules per kilogram, multiply by 0.0023255.
[D] If agglomerating, classify in low volatile group of the bituminous class.
[E] It is recognized that there may be nonagglomerating varieties in these groups of the bituminous class, and that there are notable exceptions in the high volatile *C* bituminous group.
[F] Coals having 69 % or more fixed carbon on the dry, mineral-matter-free basis shall be classified according to fixed carbon, regardless of gross calorific value.
[G] Editorially corrected.

'Anthracite' Coal, the highest rating of coal, is used primarily for residential and commercial space heating. The moisture content of fresh-mined anthracite coal is less than 15%. The heat content of anthracite coal ranges from 22 to 28 million Btu/ton on a moist, mineral-matter-free basis.

'Bituminous' is a dense coal, usually black, sometimes dark

brown, often with well-defined bands of bright and dull material, used primarily as fuel in the steam electric power generation. The moisture content of bituminous coal is usually less than 20% by weight; the heat content of bituminous coal ranges from 21 to 30 million Btu/ton on a moist, mineral-matter-free basis.

'**Sub-bituminous'** coal is a coal whose properties range from those of lignite to those of bituminous coal, used primarily as fuel for steam electric power generation. Sub-bituminous coal contains 20 to 30% inherent moisture by weight. The heat content of Sub-bituminous coal ranges from 17 to 24 million Btu/ton on a moist, mineral-matter-free basis.

'**Lignite'** coal is the lowest rank of coal, used almost exclusively as fuel for steam electric power generation.

Accordingly, under HSN providing harmonized system of nomenclature, classification of coal obtained from bituminous minerals, have been grouped under two broad categories on the basis of its ranking which depends on the degree of metamorphism, or progressive alteration, from lignite to anthracite. These are as follows:

(I) coal, whether or not pulverised, but not agglomerated; and

(II) Briquettes, ovoids and similar solid fuels manufactured from coal. The first group of coal has been further sub-divided into three sub-categories viz.,

(I-A) ANTHRACITE, which is the rank of coal comprising of semi-anthracite, anthracite and meta-anthracite, where fixed carbon content is greater than is equal to or greater than 92% but less than 98% and the coal is non-agglomerating;

(I-B) BITUMINOUS COAL, which are a group of coal comprising of the following:

(i) **high volatile A bituminous coal**, having Gross Calorific Value (GCV) Limit in Moist, Mineral-Matter-Free (m,mmf) Basis equal to or greater than/≥ 7778 kcal/kg.;

(ii) **high volatile B bituminous coal**, having GCV (M, mmf) 7222 to 7777;

(iii) **high volatile C bituminous coal**, having GCV (M, mmf) 6389 to 7221 which is commonly agglomerating & those having GCV (M, mmf) 5833 to 6388 which is agglomerating;

(iv) **medium volatile bituminous coal**; and

(v) **low volatile bituminous coal**.

(I-C) OTHER COAL, which comprises of sub-bituminous coals viz.,

(i) **sub-bituminous A coal**, having GCV (M, mmf) 5833 to 6388;

(ii) **sub-bituminous B coal**, having GCV (M, mmf) 5277 to 5832;

(iii) **sub-bituminous C coal**, having GCV (M, mmf) 4611 to 5276;

(iv) **Lignite A,** having GCV (M, mmf) 3500 to 4610; and

(v) **Lignite B**, having GCV (M, mmf) less than 3500.

Accordingly, the HSN also has prescribed sub-heading notes, providing the meaning of "anthracite" coal and "bituminous coal" in terms of volatile matter limit (dry, mmf) and calorific value (moist, mmf) basis, which is followed as such, in the Indian Customs Tariff.

9.5 It is also of common knowledge that there are many problems associated with the analysis of coal which include the tendency of the coal to gain or lose moisture and to undergo oxidation when exposed to the atmosphere. Many of the testing methods applied to coal analysis are empirical in nature and strict adherence to the procedural guidelines is necessary to obtain repeatable and reproducible results. The type of analysis normally requested by the coal industry may be proximate analysis (moisture, ash, volatile matter and fixed carbon) or an ultimate analysis (carbon, hydrogen, sulphur, nitrogen, oxygen and ash). In terms of providing definition, a 'standard' is defined as document established by consensus and approved by a recognised body that provides for common and repeated use rules, guidelines or characteristics for activities or their results. As a result, the formation of various national standards associations that led to the development of methods for coal evaluation the American Society for Testing and Materials (ASTM) has carried out uninterrupted work in this field for many decades, and investigations on the development of the standardization of methods for coal evaluation which is adopted in all major coal producing countries. Similarly, International Organization for Standardization (ISO) and British Standard Institution (BS) have also undertaken certain work on the analysis of coal. In India, Bureau of Indian Standards (BIS) has developed IS:1350 (Part-1) for methods of test for coal and coke, including preparation of sample for testing purpose in determination of moisture. Part-2, 3, 4 of IS:1350 similarly deal testing methods for determination of calorific value; sulphur; and carbon, hydrogen, nitrogen respectively. However, there are no specific standards or parameters laid down for determination of the

category of coal to test and conclude whether a particular type of coal is anthracite, bituminous, sub-bituminous or lignite. Therefore, in various analysis and testing of reports of coal, test numbers of ASTM standards have been mentioned. Some of the terms/phrases used in the ASTM standards relevant for the issue of classification of coal and the Parr formula provided therein for calculation are extracted below:

Designation: D388 – 12

Standard Classification of Coals by Rank[1]

This standard is issued under the fixed designation D388; the number immediately following the designation indicates the year of original adoption or, in the case of revision, the year of last revision. A number in parentheses indicates the year of last reapproval. A superscript epsilon (ε) indicates an editorial change since the last revision or reapproval.

1. Scope

1.1 This standard covers the classification of coals by rank, that is, according to their degree of metamorphism, or progressive alteration, in the natural series from lignite to anthracite.

1.2 This classification is applicable to coals that are composed mainly of vitrinite.

NOTE 1—Coals rich in inertinite or liptinite (exinite), or both, cannot be properly classified because, in those macerals, the properties that determine rank (calorific value, volatile matter, and agglomerating character) differ greatly from those of vitrinite in the same coal. Often such coals can be recognized by megascopic examination. In North America, these coals are mostly nonbanded varieties that contain only a small proportion of vitrain and consist mainly of attrital materials. The degree of metamorphism of nonbanded and other vitrinite-poor coals can be estimated by determining the classification properties of isolated or concentrated vitrinite fractions, or by determining the reflectance of the vitrinite (see Test Method D2798 and Appendix X1 of this classification). However, in the use of these vitrinite-poor coals, some properties normally associated with rank, such as rheology, combustibility, hardness, and grindability (as well as the rank determining properties) may differ substantially from those of vitrinite-rich coals of the same degree of metamorphism.

The precision of the classification of impure coal may be impaired by the effect of large amounts of mineral matter on the determination of volatile matter and calorific value, and on their calculation to the mineral-matter-free basis.

1.3 The values stated in SI units are to be regarded as standard. No other units of measurement are included in this standard.

1.3.1 *Exception*—The values stated in British thermal units per pound are to be regarded as the standard. The SI equivalents of British thermal units per pound are approximate.

2. Referenced Documents

2.1 *ASTM Standards:*[2]

D121 Terminology of Coal and Coke
D720 Test Method for Free-Swelling Index of Coal
D1412 Test Method for Equilibrium Moisture of Coal at 96 to 97 Percent Relative Humidity and 30°C
D1757 Test Method for Sulfate Sulfur in Ash from Coal and Coke (Withdrawn 2009)[3]
D2013 Practice for Preparing Coal Samples for Analysis
D2234/D2234M Practice for Collection of a Gross Sample of Coal
D2798 Test Method for Microscopical Determination of the Vitrinite Reflectance of Coal
D3172 Practice for Proximate Analysis of Coal and Coke
D3173 Test Method for Moisture in the Analysis Sample of Coal and Coke
D3174 Test Method for Ash in the Analysis Sample of Coal and Coke from Coal
D3175 Test Method for Volatile Matter in the Analysis Sample of Coal and Coke
D3177 Test Methods for Total Sulfur in the Analysis Sample of Coal and Coke (Withdrawn 2012)[3]
D3302 Test Method for Total Moisture in Coal
D4239 Test Method for Sulfur in the Analysis Sample of Coal and Coke Using High-Temperature Tube Furnace Combustion
D4596 Practice for Collection of Channel Samples of Coal in a Mine
D5016 Test Method for Total Sulfur in Coal and Coke Combustion Residues Using a High-Temperature Tube Furnace Combustion Method with Infrared Absorption
D5192 Practice for Collection of Coal Samples from Core
D5865 Test Method for Gross Calorific Value of Coal and Coke

3. Terminology

3.1 *Definitions:*

3.1.1 For additional definitions of terms used in this classification, refer to Terminology D121.

3.1.2 *agglomerating, adj*—as applied to coal, the property of softening when it is heated to above about 400°C in a nonoxidizing atmosphere, and then appearing as a coherent mass after cooling to room temperature.

[1] This classification is under the jurisdiction of ASTM Committee D05 on Coal and Coke and is the direct responsibility of Subcommittee D05.18 on Classification of Coals.

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[2] For referenced ASTM standards, visit the ASTM website, www.astm.org, or contact ASTM Customer Service at service@astm.org. For *Annual Book of ASTM Standards* volume information, refer to the standard's Document Summary page on the ASTM website.

[3] The last approved version of this historical standard is referenced on www.astm.org.

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3.1.3 *apparent rank, n*—of coal, the rank designation obtained on samples other than channel samples or core samples with 100 % recovery, but otherwise conforming to procedures of Classification D388.

3.1.4 *coal seam, n*—the stratum, layer, or bed of coal that lies between two other rock layers whose compositions differ significantly from that of coal.

3.2 *Abbreviations:*

3.2.1 Where it is desired to abbreviate the designation of the ranks of coal, the following abbreviations shall be used

ma—meta-anthracite
an—anthracite
sa—semianthracite
lvb—low volatile bituminous
mvb—medium volatile bituminous
hvAb—high volatile *A* bituminous
hvBb—high volatile *B* bituminous
hvCb—high volatile *C* bituminous
subA—subbituminous *A*
subB—subbituminous *B*
subC—subbituminous *C*
ligA—lignite *A*
ligB—lignite *B*

4. Significance and Use

4.1 This classification establishes categories of coal based on gradational properties that depend principally on the degree of metamorphism to which the coal was subjected while buried. These categories indicate ranges of physical and chemical characteristics that are useful in making broad estimates of the behavior of coal in mining, preparation, and use.

5. Basis of Classification

5.1 Classification is according to fixed carbon and gross calorific value (expressed in British thermal units per pound) calculated to the mineral-matter-free basis. The higher-rank coals are classified according to fixed carbon on the dry basis; the lower-rank coals are classified according to gross calorific value on the moist basis. Agglomerating character is used to differentiate between certain adjacent groups.

6. Classification by Rank

6.1 *Fixed Carbon and Gross Calorific Value*—Coals shall be classified by rank in accordance with Table 1. Classify coals

TABLE 1 Classification of Coals by Rank[A]

Class/Group	Fixed Carbon Limits (Dry, Mineral-Matter-Free Basis), %		Volatile Matter Limits (Dry, Mineral-Matter-Free Basis), %		Gross Calorific Value Limits (Moist,[B] Mineral-Matter-Free Basis)				Agglomerating Character
					Btu/lb		Mj/kg[C]		
	Equal or Greater Than	Less Than	Greater Than	Equal or Less Than	Equal or Greater Than	Less Than	Equal or Greater Than	Less Than	
Anthracitic:									
Meta-anthracite	98	...	...	2	...	...	...	...	nonagglomerating
Anthracite	92	98	2	8	...	...	...	...	
Semianthracite[D]	86	92	8	14	...	...	...	...	
Bituminous:									
Low volatile bituminous coal	78	86	14	22	...	...	...	...	commonly agglomerating[E]
Medium volatile bituminous coal	69	78	22	31	...	...	...	...	
High volatile *A* bituminous coal	...	69	31	...	14 000[F]	...	32.557	...	
High volatile *B* bituminous coal	...	...	...	...	13 000[F]	14 000	30.232	32.557	
High volatile *C* bituminous coal	...	...	...	...	11 500	13 000	26.743	30.232	
					10 500	11 500	24.418	26.743	agglomerating
Subbituminous:									
Subbituminous *A* coal	...	...	...	...	10 500	11 500	24.418	26.743	nonagglomerating
Subbituminous *B* coal	...	...	...	...	9 500	10 500	22.09	24.418	
Subbituminous *C* coal	...	...	...	...	8 300	9 500	19.30	22.09	
Lignitic:									
Lignite *A*	...	...	...	...	6 300[G]	8 300	14.65	19.30	
Lignite *B*	...	...	...	...	...	6 300	...	14.65	

[A] This classification does not apply to certain coals, as discussed in Section 1.
[B] Moist refers to coal containing its natural inherent moisture but not including visible water on the surface of the coal.
[C] Megajoules per kilogram. To convert British thermal units per pound to megajoules per kilogram, multiply by 0.0023255.
[D] If agglomerating, classify in low volatile group of the bituminous class.
[E] It is recognized that there may be nonagglomerating varieties in these groups of the bituminous class, and that there are notable exceptions in the high volatile *C* bituminous group.
[F] Coals having 69 % or more fixed carbon on the dry, mineral-matter-free basis shall be classified according to fixed carbon, regardless of gross calorific value.
[G] Editorially corrected.

air drying, *n*—a process of partial drying of coal to bring its moisture near to equilibrium with the atmosphere in the room in which further reduction and division of the sample will take place.

air-dry loss, *n*— *in coal*, the loss in mass, expressed as a percentage, resulting from each air-drying stage or the sum of all sequential air-drying stages in which the results from each stage are adjusted to the as-received basis.

DISCUSSION—Air-dry loss is neither a standard state nor a characteristic property of a coal. Air drying only removes water that can evaporate at or near ambient laboratory conditions, leaving in the coal some fraction of the inherent moisture that is more tightly bound in the pores (residual moisture). Different laboratory environments or different drying temperatures or both will result in significant differences in air-dry loss and residual moisture. **D3302**

calorific value, *n*—the heat of combustion of a unit quantity of a substance.

DISCUSSION—It is expressed in ASTM test methods in British thermal units per pound (Btu/lb). Calorific value can also be expressed in calories per gram (cal/g) or in the International System of Units, joules per gram (J/g), when required. **D5865**

moisture, *n*—*in coal*, that water in and on coal assayed in accordance with standard test methods in which the final step is the measurement of mass loss from a coal sample heated to 104 to 110°C at specified conditions of residence time, atmosphere, sample mass, and equipment configuration. r

DISCUSSION—All coals are porous and, in their natural state, the pores are essentially full of water (inherent moisture). When coal is mined and processed, water may also be present on the surface of the pieces of coal (surface moisture). Water formed by the thermal decomposition of the organic fraction of coal or associated mineral matter is not considered part of the moisture content of coal. In some coals, a very small portion of the assayed mass loss may be volatile hydrocarbons and dissolved or adsorbed gases. ASTM-standardized procedures for the determination of moisture in coal are designed for commercial purposes to facilitate trade and resource evaluation; they may not be adequate for research or other activities with different requirements. r

inherent moisture, n—in coal, the moisture that exists as an integral part of the coal in its natural state, including water in pores, but not that present in macroscopically visible fractures. In some settings this term is incorrectly used to mean "residual moisture."

DISCUSSION—In coal as it exists in the ground before it is disturbed, the pores are essentially filled with water (gases, for example, methane, may occupy a minor proportion of the pore volume in some coals); this pore-filling moisture is determined as total moisture and referred to as inherent moisture in a freshly collected sample that (1) does not exhibit visible water on fracture surfaces, (2) has not been allowed to dry after collection, and (3) was collected from a fresh coal face that is not dried (see Classification D388). On samples not meeting these criteria, inherent moisture may be estimated by determining equilibrium moisture in accordance with Test Method D1412. **D388, D1412**

residual moisture, n—that moisture remaining in the sample after air drying. In some settings this may be referred to as "laboratory moisture" or "moisture in the general analysis sample."

DISCUSSION—Residual moisture is neither a standard state nor a characteristic property of a coal. Air drying only removes water that can evaporate at or near ambient laboratory conditions leaving in the coal water that will not evaporate at those conditions. Different laboratory environments or different drying temperature or both will produce significant differences in air-dry loss and residual moisture. Residual moisture is assayed by determining the mass lost from drying the sample at 104 to 110°C at specified conditions of residence time, atmosphere, particle size, sample mass, and equipment configuration.

D3302

surface moisture, n—that portion of total moisture in a coal lot or sample collected from a lot, core face channel, or other source that is in excess of inherent moisture.

DISCUSSION—Surface moisture is not to be equated with mass loss upon air drying—a practice in some countries. Operationally, surface moisture is the difference between total moisture and inherent moisture. Some sources of surface moisture are: groundwater, drilling fluids, dust-suppressant sprays, preparation plant water, and precipitation.

D388

reporting bases:

as-determined basis, n—analytical data obtained from the analysis sample of coal or coke after conditioning and preparation to No. 60 (250 µm) sieve in accordance with Practice D2013. As-determined data represents the numerical values obtained at the particular moisture level in the sample at the time of analysis. These are normally converted, according to formulae contained in Practice D3180, to conventional reporting bases.

as-received basis, n—analytical data calculated to the moisture condition of the sample as it arrived at the laboratory and before any processing or conditioning. If the sample has been maintained in a sealed state so that there has been no gain or loss, the as-received basis is equivalent to the moisture basis as sampled.

Parr Formula: (as given in Equation 4)

8.3 *Agglomerating Character*—The test carried out by the examination of the residue in the platinum crucible incident to the volatile matter determination shall be used.[4] Coals which, in the volatile matter determination, produce either an agglomerate button that will support a 500-g weight without pulverizing, or a button showing swelling or cell structure, shall be considered agglomerating from the standpoint of classification. In addition, a result of 1.0 or more on the Free Swelling Index test (Test Method D720) may also be used to indicate the coal is agglomerating; a result of 0.5 or 0 indicates the coal is nonagglomerating.

9. Calculation to Mineral-Matter-Free Basis

9.1 *Calculation of Fixed Carbon and Calorific Value*—For classification of coal according to rank, calculate fixed carbon and gross calorific value to the mineral-matter-free (Mm-free) basis in accordance with the Parr formulas,[5] Eq 2-4. Background information concerning the development of the Parr formulas as well as other ranking considerations and examples of the calculations (Table 1) are provided in Appendix X2.

9.2 Calculate to Mm-free basis as follows:

9.2.1 *Parr Formulas:*

$$\text{Dry, Mm} - \text{free FC} = 100(\text{FC} - 0.15S)/(100 - (M + 1.08A + 0.55S)) \quad (2)$$

$$\text{Dry, Mm} - \text{free VM} = 100 - \text{Dry, Mm} - \text{free FC} \quad (3)$$

$$\text{Moist, Mm} - \text{free Btu} = 100(\text{Btu} - 50S)/(100 - (1.08A + 0.55S)) \quad (4)$$

where:

Btu = gross calorific value, Btu/lb,
FC = fixed carbon, %,
VM = volatile matter, %,
M = moisture, %,
A = ash, %, and
S = sulfur, %.

In Eq 2 and Eq 4, the quantities are all on the inherent moisture basis. Fixed carbon (FC) and ash (A) are both adjusted to the SO_3–free basis in accordance with 8.2.

10. Keywords

10.1 anthracite; bituminous; coal; lignite; rank

[4] Gilmore, R. E., Connell, G. P., and Nicholls, J. H. H., "Agglomerating and Agglutinating Tests for Classifying Weakly Caking Coals," *Transactions*, American Institute of Mining and Metallurgical Engineers, Coal Division, Vol 108, 1934, p. 255.

[5] Parr, S. W., "The Classification of Coal," *Bulletin No. 180*, Engineering Experiment Station, University of Illinois, 1928.

9.6 On careful reading of above technical literature on various categories of coal, its stratification based on its usage or value in terms of physical or chemical properties, intricacies involved in considering the various elements such as moisture, Sulphur, Ash, fixed carbon etc., for identifying the parameters of calorific value, volatile matter of coal, which we would be discussing in the following paragraphs, as and when appropriate.

10.1 Now, we may closely examine the scope of the contending classification for determining correct classification of the imported goods. The relevant sub-headings and their tariff entries of contending classification of imported goods under Chapter headings 2701 12 and 2701 19 and the relevant Chapter notes, Heading/Sub-heading notes, if any, in the First Schedule to the Customs Tariff Act, 1975 are extracted and given below:

"CHAPTER 27

Mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes

Notes :

1. This Section does not cover :

xxx xxx xxx xxx

Sub-heading Notes :

1. For the purposes of sub-heading 2701 11 "anthracite" means coal having a volatile matter limit (on a dry, mineral-matter-free basis) not exceeding 14%.

2. For the purposes of sub-heading 2701 12, "bituminous coal" means coal having a volatile matter limit (on a dry, mineral-matter-free basis) exceeding 14% and a calorific value limit (on a moist, mineral-matter-free basis) equal to or greater than 5,833 kcal/kg.

xxx xxx xxx xxx

Tariff Item	Description of goods
(1)	(2)
2701	**Coal; briquettes, ovoids and similar solid fuels manufactured from coal**
	- Coal, whether or not pulverised, but not agglomerated :
2701 1100	-- Anthracite
2701 1200	-- Bituminous coal
2701 19	-- *Other coal:*
2701 1910	--- Coking coal
2701 1920	--- Steam coal
2701 1990	--- Other coal
2701 20	- *Briquettes, ovoids and similar solid fuels manufactured from coal:*
2701 2010	--- Anthracite agglomerated
2701 2090	--- Other

Amendment in Chapter Heading 2701 w.e.f. 01.05.2023
vide Clause 126 of the Finance Act, 2023

Tariff Item	Description of goods
(1)	(2)
2701	**Coal; briquettes, ovoids and similar solid fuels manufactured from coal**
	- Coal, whether or not pulverised, but not agglomerated :
2701 1100	-- Anthracite
2701 12	*-- Bituminous coal:*
2701 1210	--- Coking coal
2701 1290	--- Other coal
2701 19	*-- Other coal:*
2701 1910	--- Coking coal
2701 1920	--- Steam coal
2701 1990	--- Other coal
2701 20	*- Briquettes, ovoids and similar solid fuels manufactured from coal:*
2701 2010	--- Anthracite agglomerated
2701 2090	--- Other

10.2 On careful examination of the above entries in the two contending sub-headings/tariff item of 2701 1200 and 2701 1920, it clearly transpires that at the Chapter heading level, there is no difference of opinion in classification of impugned goods among the appellants and the department. In other words, both the sides are agreeable that the imported goods are 'coal' covered under CTH 2701 10 and are not covered under the other category relating to Briquette, ovoids and similar solid fuels classifiable under CTH 2701 20. On further reading of the General Explanatory Notes and Additional Notes to the First Schedule to the Customs Tariff, which provide explanation about the scope of coverage of goods under single/double/triple/four dash entries, and provide that the goods covered under "- -"/double dash are sub-classification " - "/single dash items, it would transpire that (i) 'anthracite' coal; (ii) 'bituminous' coal; and (iii) 'all other' types of coal (including cocking coal, steam coal) are at the equal/same level, being sub-classification of coal. Further, the sub-heading notes (1) and (2) to Chapter 27 also provide for specific definition for 'anthracite' and 'bituminous coal'. The sub-heading note (2) provides the specific parameters to be verified and the limits of such parameters, to be complied with for classifying the coal as 'bituminous coal'. Thus, it is a matter of verification of such parameters in terms of the laid down methods specified therein, and to classify the coal accordingly. Though there is no definition provided for 'cocking coal' and 'steam coal' in the customs tariff, which are covered under the category of other coal, these are commonly known in terms of their

usage i.e., 'cocking coal' for use in metallurgical industry and 'steam coal' for heating purpose.

10.3 The two specific factors that are required to be examined in terms of sub-heading notes for classification of coal, for categorizing it as bituminous coal or other type coal are the following:

(i) **calorific value limit**, on a Moist, mineral-matter-free basis is equal to or greater than 5,833 kcal/kg. in case of 'bituminous coal'; and
(ii) **volatile matter limit**, on a dry, mineral-matter-free basis shall be exceeding 14% in case of 'bituminous coal'.

As we had noticed at paragraph 9.4 above, adopting proper standards for testing and analysis of coal and reporting the results in the manner provided in the sub-heading notes are important to derive meaningful results for arriving at proper conclusion for classification of goods. As the requirement for determining the limits of parameters under sub-heading note (2) is **Moist, mineral-matter-free basis** for 'calorific value' and **Dry, mineral-matter-free basis** for 'volatile matter', and both limits are required to be met simultaneously, to categorize the coal as 'bituminous coal', we need to evaluate the test results of the imported goods for proper determination of classification.

10.4 On examination of the test results of various parameters as reported in the Sampling and Analysis of testing of impugned goods at Load Port, vide test reports in respect of all eight B/Es, the following details are relevant for consideration, as provided in the Table given below. On perusal of such Sampling and Analysis test reports, it also transpires that in all the eight B/Es covering the import of impugned goods in the present appeals, coal samples for analysis by various Laboratories were drawn at the point of loading/at the port of export and in few cases at the point of discharging/at the destination port; and testing was undertaken, and the results of various parameters in such test reports submitted by the appellants. Therefore the only reliable test results available on case records and in the SCN/impugned orders are given below in the following Table.

TABLE - providing various details in respect of impugned goods covered under eight B/Es and status, duty demands

B/E details	Vessel Details	Certificate details	GCV ARB Kcal/kg	GCV ADB %	Ash ADB In %	Sulphur ADB In %	Total Moisture ARB	Inherent Moisture ADB	Volatile Matter ADB	Duty demands
7564900 dt. 02.08.2012	MV Spar Ursa 22,000MTs	Inspectorate dt. 24.07.2012	4626	5758	8.69	0.73	28.60	11.12	41.93	Reassessment u/s 17(4) and Duty demand confirmed u/s 28(1)
8960556 dt. 07.01.2013	MV Densa Panther 25,000MTs	Geochem dt. 04.01.2013	4631	5698	6.40	0.55	31.89	16.20	41.80	
7510536 dt. 02.08.2012	MV Jay 55,000MTs	Geochem dt. 23.07.2013	4551	5662	8.72	0.46	30.27	13.25	-	Provisional Assessment finalised Duty demand confirmed u/s 28(1)
8189651 dt. 11.10.2012	MV Vijaya Nagar 73,026MTs	Pt. Geo Services dt.04.10.2012	6403	-	11.96	0.68	7.86	3.82	42.68	
8004800 dt. 21.09.2012	MV Trade Star 27,500MTs	Geochem dt. 17.09.2012	4644	-	9.85	0.38	28.61	13.92	39.90	Final Assessment Duty demand confirmed u/s 28(1)
8600064 dt. 27.11.2012	MV Shandong Haitong 30,000MTs	Geochem dt. 22.11.2012	4914	-	6.5	0.50	28.75	13.72	40.05	
6533813 dt. 13.04.2012	MV K. Jasper 30,000MTs	Pt. Mitra S.K. Analisa Testama dt.09.04.2012	4512	5681	4.11	0.25	30.03	11.90	43.78	Provisional Assessment finalised including demurrage, detention charges Duty demand confirmed u/s 28(1)
6837734 dt. 16.05.2012	MV Scarlet 27.500MTs	Inspectorate dt. 07.05.2012	4625	5795	9.15	0.40	30.33	12.70	40.51	

10.5 In general samples for analysis of coal were taken not from the coal bed/seam, but at the time of shipping and/or discharge, after mining, washing and further preparation, and thus it would obviously have contained substantial 'surface moisture'. In other words, such coal samples will have total moisture content including inherent moisture, residual moisture and surface moisture. In all these cases, as per the requirement of sub-heading note (2) to Chapter 27, the 'calorific value' is required to be calculated on 'Moist, mineral, matter free basis' from given variables of various parameters in 'As Received Basis' (ARB) or 'Air Dried Basis' (ARB) etc., and therefore, it is necessitated to adopt a proper method in determining required result for arriving at calorific value, which is the Parr formula prescribed in ASTM Standard D388-12.

10.6 The appellants have produced certificates incorporating test reports from the Laboratories which are also extracted and given in the preceding pages. Analysis of values of technical parameters such as Total Moisture, Inherent Moisture, Ash content, Sulphur content, Volatile matter and Fixed Carbon as reported under ASTM testing standards are provided by the appellants to the Customs authorities at the time of import. These values were accepted by the Customs at the port of import, at the time of clearing the import consignments from customs control and for collecting the applicable duties of customs.

10.7 It is not disputed by both sides that the calorific value limit is required to be determined on 'Moist, mineral-matter-free' basis as per ASTM D-388. The said ASTM standard provides a formula for determining the 'GCV on moist, mineral-matter-free' basis from various parameters reported in the test reports of coal samples. The same is extracted and quoted below:

> ***"X 2.2.2 Moist, Mineral-Matter-Free Basis****—The basis to which calorific value is calculated for determining coal rank for samples of coal of ranks high volatile A bituminous and lower. This is the mineral-matter-free, inherent-moisture-containing basis, which is equivalent to the as-received basis for samples collected and preserved as described in 7. In Eq 4, the calorific value is corrected for the estimated heat of combustion of pyrite (−50S), and then calculated to the moist, mineral-matter-free basis by the factor (100 - Mm), equivalent to (100 − (1.08A+ 0.55S)). All data are on the inherent-moisture-containing basis.*

10.8 The formula for obtaining the requisite calorific value in

parameters as defined under sub-heading note (2) to Chapter 27, known as **Parr formula**. The calorific value is calculated for an illustrative case of impugned goods under B/E No.8004800 dated 21.09.2012 as follows:

(Step 1) Since the Calorific Value used in Parr formula is of measure Btu/lb, the given GCV needs to be firstly converted from Kcal/kg. to Btu/lb, as follows by multiplying the standard 1.8 times:

Calorific Value (GCV) $_{ARB\ in\ Btu/lb}$= GCV in kcal/kg X 1.8[19]

= 4664 X 1.8

= **8359.20 Btu/lb**

(Step 2) Convert Air Dry Basis variables to As-Received Basis[20], by using Moisture $_{ARB}$ and Moisture $_{ADB}$:

$$\frac{100 - M_{ARB}}{100 - M_{ADB}} = \frac{100 - 28.60}{100 - 13.92} = \frac{71.40}{86.08} = \mathbf{0.8294}$$

Ash $_{ARB}$ = Ash $_{ADB}$ X 0.8038 = 9.85 X 0.8294 = **8.17%**

Sulphur $_{ARB}$ = Sulphur $_{ADB}$ X 0.8038 = 0.38 X 0.8294 = **0.32%**

(Step 3) By applying Parr Formula for determining GCV $_{M,mmf}$:

$$= \frac{Btu - (50 \times Sulphur_{ARB})}{100 - [(1.08 \times Ash_{ARB}) + (0.55 \times Sulphur_{ARB})]} \times 100$$

$$= \frac{8359.20 - (50 \times 0.32)}{100 - [(1.08 \times 8.17) + (0.55 \times 0.32)]} \times 100$$

$$= \frac{8359.20 - 16.00}{100 - [8.82 + 0.17]} \times 100$$

$$= \frac{8343.20}{91.01} \times 100 = 9167.34 \div 1.8 = \mathbf{5092.96\ kcal/kg}$$

Calorific value, Moist, mineral-matter-free basis arrived at as per Parr formula, duly converted back from Btu/lb to kcal/kg is 5092.96 kcal/kg.

---

[19] One British Thermal Unit (Btu) = 0.252164 Kilocalories (Kcal) & 1 pound (lb) = 0.453592kg. For obtaining the Btu/lb from Kcal/kg ratio, 0.252164/0.453592=0.5559269. Therefore, conversion factor = 1/0.555927 = 1.79≈1.8. Therefore, Kcal/kg to Btu/lb is obtained by multiplying the given value by 1.8 times. BIS standard IS 1890 (Part-4):2001 prescribing Standard Units & Quantities, and conversion factors, specify that 1Btu/lb = 2326 Joule/kg; since 1 Joule (J) =0.000239, 1 Btu/lb = (2326x0.000239)=0.5559 which gives conversion factor 1/0.5559=1.8

[20] Formula for converting Air dried to Dry basis = $Value_{dry}$ x [100/(100-ADM] & converting dry basis to As-Received basis = $Value_{dry}$ x [(100-TM)/100]. Combining both equations, Value $_{AR}$

$=Value_{AD}$ x	100 / (100-ADM)	X	(100-TM) / 100	=	$=Value_{AD}$ x	(100 - TM $_{Or}$ Moisture $_{ARB}$) / (100 - ADM $_{Or}$ Moisture $_{ADB}$)

which is less than the limit of 5833 kcal/kg. In terms of sub-heading Note (2) to Chapter 27, in order to define the imported coal as 'Bituminous Coal', both the conditions of prescribed limits of Calorific Value and Volatile matter, must be cumulatively fulfilled. In the above case, failure to fulfill the first condition of Calorific Value, makes the determination of second parameter unnecessary and does not require it to be calculated and verified. However, for the purpose of record, we would go ahead with the calculation of Volatile Matter, Dry, mineral-matter free basis, in order to evaluate the parameter is well within the prescribed limits.

10.9 **Calculation of Volatile Matter, Dry, mineral-matter-free basis**:

(Step-1) Calculate Fixed Carbon (FC) on Dry, mineral-matter-free basis:

Fixed Carbon (FC) =

= 100 – (Total Moisture $_{ARB}$ + Ash $_{ADB}$+ Volatile Matter $_{ADB}$)

= 100 – (28.61+9.85+39.90)

= 100 – 78.36

= **21.64**

(Step 2) By applying Parr Formula for determining Volatile Matter $_{d,mmf}$:

Volatile Matter $_{d,mmf}$ = 100 – FC $_{d,mmf}$

$$FC_{d,mmf} = \frac{100 \times [FC - (0.15 \times Sulphur_{ADB})]}{100 - [M + (1.08 \times Ash_{ARB}) + (0.55 \times Sulphur_{ARB})]}$$

$$FC_{d,mmf} = \frac{100 \times [36.33 - (0.15 \times 0.38)]}{100 - [13.92 + (1.08 \times 8.17) + (0.55 \times 0.32)]}$$

$$FC_{d,mmf} = \frac{100 \times [36.33 - 0.06)}{100 - [13.92 + 8.82 + 0.18)]}$$

$$FC_{d,mmf} = \frac{100 \times 36.27}{100 - 22.92}$$

$$FC_{d,mmf} = \frac{3627}{77.08} = 47.05\%$$

Volatile Matter $_{d,mmf}$ = 100 – FC $_{d,mmf}$ = 100 – 47.05 = **52.95%**

In this case, the Volatile Matter, Dry, mineral-matter-free basis is 52.95%, which exceeds the prescribed limit of 14%. Therefore, the

impugned goods do fulfill one of the limits/conditions as per sub-heading Note (2) to Chapter 27. However, since both conditions are required to be fulfilled cumulatively, to define it as Bituminous Coal, and this has not been complied with in the present case of goods covered under B/E No.8004800 dated 21.09.2012, the same cannot be covered under the scope of the definition of 'Bituminous Coal'. Therefore, we are of the considered view that the goods covered under B/E No. 8004800 dated 21.09.2012, are not covered under the scope of 'Bituminous coal' for classifying it under CTI 2701 1200. Therefore, the appropriate classification of goods covered under B/E No. 8004800 dated 21.09.2012 is under CTI 2701 1920 as declared by the appellants.

11.1 Similarly, through detailed workings undertaken for the rest of the imported goods covered under other seven B/Es as above for determining Calorific Value and Moisture limits, wherever necessary, in terms of parameters laid down under sub-heading note (2) to Chapter 27 of the Customs Tariff, the following results have been arrived at as follows:

B/E details	**GCV $_{m, mmf}$**	**VM $_{d, mmf}$**	**Sub-heading note (2) requirement**
8004800 dated 21.09.2012	5092.26kcal/kg	Since calorific value is not qualified, determination of Volatile matter $VM_{d,mmf}$ is not required	Not fulfilled, Other than Bituminous coal
8600064 dated 27.11.2012	5217.21kcal/kg	Since calorific value is not qualified, determination of Volatile matter $VM_{d,mmf}$ is not required	Not fulfilled, Other than Bituminous coal
6533813 dated 13.04.2012	4678.59kcal/kg	Since calorific value is not qualified, determination of Volatile matter $VM_{d,mmf}$ is not required	Not fulfilled, Other than Bituminous coal
6837734 dated 16.05.2012	5020.92kcal/kg	Since calorific value is not qualified, determination of Volatile matter $VM_{d,mmf}$ is not required	Not fulfilled, Other than Bituminous coal
7564900 dated 02.08.2012	5002.83kcal/kg	Since calorific value is not qualified, determination of Volatile matter $VM_{d,mmf}$ is not required	Not fulfilled, Other than Bituminous coal
8560556 dated 07.01.2013	4908.07kcal/kg	Since calorific value is not qualified, determination of Volatile matter $VM_{d,mmf}$ is not required	Not fulfilled, Other than Bituminous coal
7510536 dated 27.07.2012	4923.26kcal/kg	Since calorific value is not qualified, determination of Volatile matter $VM_{d,mmf}$ is not required	Not fulfilled, Other than Bituminous coal. Even in CRCL test report of samples drawn at discharge port, confirms that it is 'steam coal'.

B/E details	GCV $_{m, mmf}$	VM $_{d, mmf}$	Sub-heading note (2) requirement
8189651 dated 11.10.2012	7317.15$_{kcal/kg}$	As calorific value parameter is met, determination of Volatile matter yielded result of 54.88% $VM_{d,mmf}$	Though both parameters are fulfilled, since discharge port test repot of CRCL confirms it as 'steam coal', the same merits acceptance. Further, no retesting option given or undertaken by department.

11.2 On careful examination of the above test results of the laid down parameters as per sub-heading Note (2) to Chapter 27 for impugned goods covered under all eight B/Es, it transpires that in seven B/Es, the imported goods did not fulfill the parameters and could not be considered as 'bituminous coal'. However, it is only in one case, the test results had fulfilled the laid down parameters. In terms of the extant instructions issued by the Central Board of Excise & Customs (CBEC) from time to time on testing of goods, more particularly in the Circular No.3/2011-Customs dated 06.01.2001, where testing of imported goods are required as per statutory requirement under Prevention of Food Adulteration Act, 1954, then testing of imported goods shall be mandatory. In the present case, since the classification of goods were dependent upon the laid down parameters of calorific value and volatile matter, in usual course of customs clearance, the imported goods would be subjected to chemical testing. Further, in terms of the Customs Manual, 2011 issued on 27.01.2011, incorporating update of various measures introduced by CBEC in order to facilitate the trade and enhance the level of compliance with the Customs laws, Rules and Regulations, it has been provided that where the appraising officer is not clear about the description of the goods from the document or has doubts about the proper classification, which may require detailed examination of the nature of the goods or testing of its samples, he may give an examination order in advance of finalisation of assessment including order for drawl of representative sample. On receipt of the examination report, the group appraising officer assesses the Bill of Entry, indicating the final classification, valuation, and various duties such as basic, countervailing, anti-dumping, safeguard duty etc. that are leviable. Thereafter the Bill of Entry goes to Assistant Commissioner/Deputy Commissioner for

confirmation of such assessment of goods. During the disputed period, since the 'self-assessment' concept was in vogue, the declarations made by the appellants importer in the B/Es could have been either accepted on being found satisfactory by the proper officer of customs or under automated Risk Assessment based Indian Customs Electronic Data Interchange System (ICES) or be subjected to verification, if the proper officer of customs had exercised such option under Section 17(4) ibid, wherein the self-assessment is acceptable, then allow the same as final; or if the self-assessment made by importer is not acceptable, then the proper officer of customs is required to pass re-assessment order, as it is contrary to the declaration made by the appellants importer. In case of exercise of the option for provisional assessment in case of bulk cargo (as the impugned goods are 'steam coal in bulk'), on account of various reasons viz., actual quantity of import, demurrage charges etc., appropriate procedure as prescribed under Section 18 ibid has to be followed, and after ascertaining the requisite details, the non-availability of which necessitated such provisional assessment, for finalizing it within a prescribed period specified therein. Any duty short paid/ short levied, or not paid/not levied could be recovered subsequently in terms of the provisions of Section 28 ibid. Further, over the course of time the legal provisions relating to provisional assessment under Section 18 ibid was streamlined enabling it as an independent provision for payment of deficient amount or refund of excess amount already paid amount during provisional assessment, at the time of making final assessment, along with refund, interest for delayed payment/refund, if any, unjust enrichment angle for considering refund of duty paid in excess during provisional assessment etc. On the other hand, in cases involving demand of duty under Section 28 ibid, where the self-assessment made by the appellants importer had been accepted and no provisional assessment was involved, at the time of clearance of the goods from customs control, the grounds invoked for revising the classification of goods at a later stage, based on the same set of facts and documents as was available at the time of accepting the self-assessments, simply by adopting improper calculation of calorific value and volatile matter, does not provide any justifiable ground for taking such recovery action. Further, when all requisite documents have been submitted by the appellants importer during the time of imports, there is no question of having suppressed any fact, or having willfully mis-declared any facts

or collusion etc., to invoke the demand of duty.

11.3 In the bunch of appeals before us, there is no case of any details sought by the department which having not been provided by the appellants importer, and therefore, necessitated provisional assessment. It is only a case of revising the classification of goods, which have been assessed provisionally for having been imported in bulk, for final assessment later on account of actual quantity of import, valuation of goods on account of demurrage, other charges that needed to be added etc., Therefore, revising the classification of goods and resultant payment of deficiency of duty by issue of SCN cannot stand legal scrutiny, as we had found in our examination that the classification of goods declared by the appellants are appropriate, on the basis of the factual details discussed in preceding paragraphs. Further, for the same reasons, the demand of differential duty upon finalization of assessment, by showing the reason of being covered under the definition provided for 'bituminous coal' as per sub-heading Note (2) to Chapter 27, at a later stage, would not sustain, as it is contrary to the legal position laid down under the Customs statute.

11.4 The legal provisions dealing with drawl of samples are provided under Section 144 of the Customs Act, 1962. It is a fact on record, that the imported goods were allowed for clearance on the basis of load port test reports, and the declared classification of the goods were accepted by the department. It is only after conduct of investigation by the department that the classification of the imported goods and its eligibility to duty exemption was questioned. It is also an undisputed fact that in respect of B/E No. 7510536 dated 27.07.2012, test report conducted by departmental CRCL laboratory dated 31.08.2012 indicating GCV_{ADB} as 5957.20 kcal/ kg. and volatile matter $_{ADB}$ as 29.01% is available and for B/E No. 8189651 dated 11.10.2012, similar test report of CRCL laboratory dated 31.10.2012 indicating GCV_{ADB} as 6036.11 kcal/ kg. and volatile matter $_{ADB}$ as 34.6% is also available, but these have not been taken into consideration for demand of differential duty in the SCN in F. No. 8/10/2013-SIIB VIDE III dated 30.08.2013, even though the aforesaid test reports have been made as part of Relied Upon Documents (RUD) in the Annexure-A to the said SCN. These are evidential from the extract of the SCN and the chemical test reports of the CRCL extracted and given in the following pages.

CRCL Test Report dated 31.08.2012 in respect of B/E No. 7510536 dated 27.02.2012:

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MEMO No. 214/2012 Dt. 27/8/2012 SL No. Rep-7

The following samples are forwarded for favour of analysis as to :

Import / ~~Export~~ { per s.s M.V JAY — Rotation No. 2041003 dt.

By M/s. JSW Steel Ltd.

Bill of Entry / ~~Shipping Bill~~ { No. 7510536 27/07/12

Maker's Name — Manufactured by

Imp. 172 31/07/12

brand

Dated — for Assistant Collector for Appraisement. 27/7/2012

Number of Samples	Description	Results
(21)	Steam Coal in Bulk. (Analisis report attached)	The sample is in the form of black lumps of irregular shape and sizes. It has the characteristics of Steam Coal. Total Moisture (ARB) = 30.1% Moisture (ADB) = 12.1% Volatile matter (ADB) = 29.6% Ash Content (ADB) = 12.4% Gcv (ADB) 6553 Kcal/kg Rjs Returned

Analysed and returned Results shown above.

A. C., Appraising on 31/8/2012

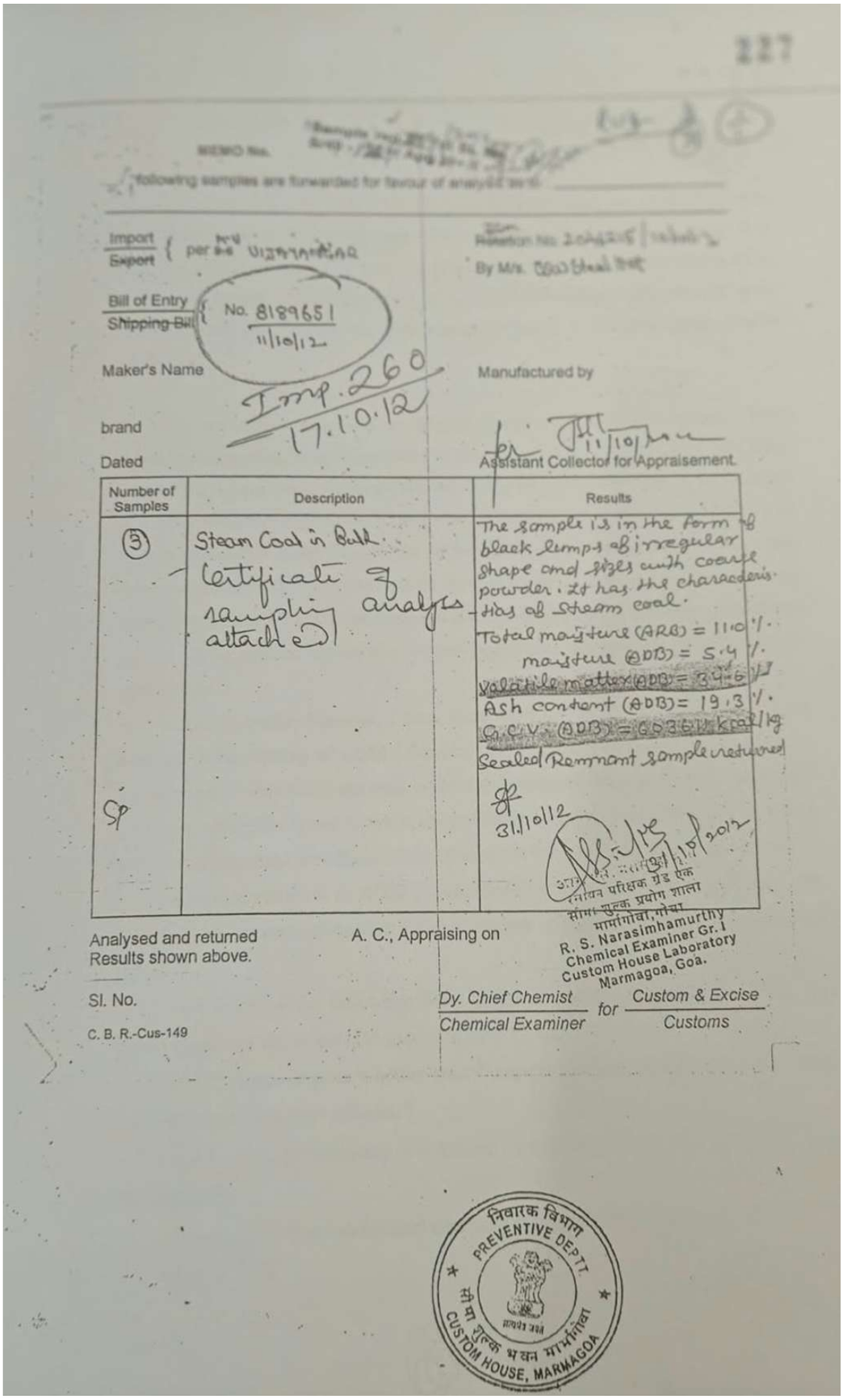
Sl. No.

C. B. R.-Cus-149

Dy. Chief Chemist / Chemical Examiner

S. Narasimhamurthy Chemical Examiner Gr. I Central Revenue Control Laboratory Custom House Laboratory Marmagoa Customs

CRCL Test Report dated 31.10.2012 in respect of B/E No. 8189681 dated 11.10.2012:



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following samples are forwarded for favour of analysis and report.

Import / ~~Export~~ { per M/s

Bill of Entry / ~~Shipping Bill~~ { No. 8189651 11/10/12

By M/s.

Maker's Name

Manufactured by

brand

Dated

Imp. 260 17.10.12

11/10/12

Assistant Collector for Appraisement.

Number of Samples	Description	Results
(5)	Steam Coal in Bulk. Certificate of sampling & analysis attached	The sample is in the form of black lumps of irregular shape and sizes with coarse powder. It has the characteristics of Steam coal. Total moisture (ARB) = 11.0 %. moisture (ADB) = 5.4 %. Volatile matter (ADB) = 34.6 %. Ash content (ADB) = 19.3 %. G.C.V. (ADB) = 6036 kcal/kg. Sealed Remnant sample returned. 31/10/12 31/10/2012

Analysed and returned
Results shown above.

A. C., Appraising on

सीमा शुल्क ग्रेड एक
रासायन परिक्षक प्रयोग शाला
मार्मागोवा, गोवा
R. S. Narasimhamurthy
Chemical Examiner Gr. I
Custom House Laboratory
Marmagoa, Goa.

Sl. No.

C. B. R.-Cus-149

Dy. Chief Chemist / Chemical Examiner for Custom & Excise / Customs

निवारक विभाग PREVENTIVE DEPTT सीमा शुल्क भवन मार्मागोवा CUSTOM HOUSE, MARMAGOA

Extracts of SCN in F. No. 8/10/2013-SIIB VIDE III dated 30.08.2013:

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8189651 dated 11.10.12 under Customs Tariff sub-heading 27011920 should not be rejected and why the same should not be re-classified under Customs Tariff sub-heading 2701 1200 of the First Schedule to the Customs Tariff Act, 1975.

(ii) The Bill of Entry no 7510536 dated 27.7.2012 should not be finally assessed as per correct classification under CTH 27011200, and the Customs differential duty amounting to **Rs.-22234344/-**(Rupees Two Crores Twenty two lakh Thirty four Thousand Three Hundred Forty four only), on the 55000 MTs of imported impugned Coal, should not be recovered from them under Section 18 (2) of the Customs Act, 1962 read with section 28(1) of Customs Act 1962.

(iii) The Bills of Entry no 8189651 dated 11.10.2012 should not be finally assessed as per correct classification under CTH 27011200, and the Customs differential duty amounting to **Rs. 46276728/-**(Rupees Four crores Sixty Two lakh Seventy six thousand Seven hundred Twenty eight only), on the 73026 MTs of Imported impugned Coal, should not be recovered from them under Section 18 (2) of the Customs Act, 1962 read with section 28(1) of Customs Act 1962.

(iv) The **55000 MTs**, imported Coal valued at **Rs.209580016/-** imported vide Bill of Entry no 7510536 dated 27.7.2012, should not be confiscated / held liable for confiscation under the provisions of Section 111(m) of the Customs Act,1962;

(v) The **73026 MTs**, imported Coal valued at **Rs.436202546/-** imported vide Bill of Entry no 8189651 dated 11.10.2012, should not be confiscated / held liable for confiscation under the provisions of Section 111(m) of the Customs Act,1962;

(vi) Interest should not be recovered from them on the said differential Customs duty, as at (ii) and (iii) above, under Sections 18(3) of the Customs Act, 1962.

(vii) Interest should not be recovered from them on the said differential Customs Duty, as at (ii) and (iii) above, under Section 28AA of the Customs Act, 1962;

(viii) Penalty should not be imposed on them under Section 112(a) of the Customs Act, 1962.

(ix) Penalty should not be imposed on them under Section 114AA of the Customs Act, 1962.

16. The above noticee is required to specifically mention in their written submissions, if any, as to whether they wish to be heard in person before the case is adjudicated. If no specific mention is made about this in their written submission, it shall be presumed that they do not wish to be heard in person, and the case would be adjudicated on the basis of evidences.

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on record. They should produce at the time of showing cause, all the evidences upon which they intend to rely in support of their defense.

17. The above noticee is further required to note that their reply should reach within 30 (thirty) days from the date of receipt of this Notice. If no cause is shown against the action proposed above within 30 days from the receipt of this notice or if they do not appear before the adjudicating authority as and when the case is posted for hearing, the case is liable to be decided ex-parte on the basis of facts and evidences available on record.

18. The documents relied upon in the present Show Cause Notice are as listed at **Annexure- 'A'** attached with this Show Cause Notice, and photo copies of the same are enclosed herewith and where not enclosed shall be made available on request in writing. The documents relied upon can also be inspected on prior intimation with in 30 days of from receipt of this notice.

19. This Show Cause Notice is issued without prejudice to any other action that may be taken against the noticee or any other persons concerned in respect of the aforesaid goods under the Customs Act, 1962 and / or any other law for the time being in force.

20. This SCN can be amended modified or supplemented to at any stage before adjudication of the case.

(V.P.C. RAO)
COMMISSIONER,
CUSTOMS, CENTRAL EXCISE & SERVICE TAX,
PANAJI, GOA

F. No. 8/10/2013-SIIB VIDE III
Date: 30/8/2013

To;

1. M/s. J.S.W. Steel Limited,
   Jindal Mansion,
   5A, Dr G. Deshmukh Marg,
   Mumbai 400026.

Copy to,

1. Assistant Commissioner of Customs (Adjudication)
   Hqrs, Panaji, Goa
2. office copy

निवारक PREVENTIVE CUSTOM HOUSE, MARMAGOA

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ANNEXURE "A"

To the notice F.N.8/10/2013-SIIB-VIDE III

LIST OF THE RELIED UPON DOCUMENTS

RUD S.No	Subject	Page nos from to
1	Bill of Entry number 7510536 dtd 27.7.2012 alongwith Bond	01-04
2	Bill of Entry number 8189651dtd 11.10.2012 alongwith Bond	01-04
3	Certificate of Sampling and Analysis no PTII/GC/035/2012 dt 23.7.2012 issued by GEO CHEM	01-01
4	Certificate of Sampling and Analysis, no 048832 dtd 4.10.2012 issued by M/s PT.GEOSERVICES	01-01
5	Form Annexure I u/r 10 of Customs Valuation Rule 1988 (BE 8189651)	01-01
6	Enclosure to BE 7510536 dtd 27.7.12	01-02
7	Dy CC Report no Imp 172/31.7.12 (BE7510536)	01-01
8	Dy CC Report no Imp 260/17.10.12 (BE8189651)	01-01
9	Statement of Shri Navneet Shukla ,AGM (Commercial) J.S.W.Steel Ltd recorded u/s 108 of C.A.Act 1962 on 18.3.2013	01-03
10	Statement of Shri Shiv Narayan Das, Executive m/s Om Freight Forwarders CHA of J.S.W.Steel Ltd recorded u/s 108 of C.A.Act 1962 on 12.3.2013	01-04
11	Statement of ShriAravind Rajagopalan,GM (Commercial) J.S.W.Steel Ltd recorded u/s 108 of C.A.Act 1962 on 02.4.2013	01-12
12	Chapter 27 of the Customs Tariff Act ,	01-02
13	Exemption Notification no 12/2012 dtd 17.3.2012 (relevant sheets only)	01-02
14	Calculations of Differential Duty	01-01
15	Letter dtd 5.3.13 from Dy Director DRI zonal unit Ahmadabad Jt Dir CRCL.	01-03
16	Response vide letter dtd 07.3.13, from Jt Director CRCL, Mumbai	01-01

निवारक विभाग PREVENTIVE DEPTT. सीमा शुल्क भवन मार्मागोवा CUSTOM HOUSE, MARMAGOA

IMPORT OF COAL (BITUMINOUS) BY *JSW STEEL LTD.*
CHEMICAL REPORT OF LOAD PORT

S.n.	Vessel	Be no	Qty	Report of Sample & Analysis data from load port.											
				total moisture (ARB)	inherent moisture (ADB)	ash content (ADB)	volatile matter (ADB)	fixed carbon (ADB)	total sulphure (ADB)	gross calorific value (ARB)	gross calorific valu (ADB)	GCV(Kcal/Kg.) m,m,m free basis	Duty paid at the time of provisional assessment Rs.	Actual duty liability Rs.	Differential duty to be paid Rs.
1.	M.V. Vijayanagar	8189651 dtd. 11.10.12	73026 Mts.	7.86	3.82	11.96	42.68	41.54	0.68	6403	----	**7363.26**	8253725	54530453	46276728
2	M.V. Jay	7510536 dtd. 27.07.12	55000 Mts.	30.27	13.25	8.72	--	---	0.46	4551	5662	**6254.15**	4991174	27225518	22234344

2/4/13

CUSTOM HOUSE, MARMAGOA PREVENTIVE DEPTT.

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11.5 In view of the above factual position emerging from the basic document of Show Cause Notice, not taking into account the CRCL test reports, but had only taken into account the load port values for calculating such duty demands, we are unable to understand why the department has not relied upon such test reports for calculation of duty demand, even though these are available, even though these are included as part of RUD. Upon careful examination of such CRCL reports, we could only make out that such reports were affirmative of the fact that the imported goods are having the characteristics of 'steam coal', supporting the declared description and classification of the goods, despite the parameters of 'calorific value' and 'volatile matter' not having been determined in terms of requirements under sub-heading Note (2) to Chapter 27, on moist, mineral-matter free basis and on dry, mineral-matter free basis, respectively. Therefore, such test reports of imported goods given by the CRCL/department at discharge port viz., CRCL laboratory dated 31.08.2012 in case of B/E No. 7510536 dated 27.07.2012; and CRCL laboratory dated 31.10.2012 in respect of for B/E No. 8189651 dated 11.10.2012, confirming that the imported goods are 'steam coal' is relevant, as it represents the actual characteristics of impugned goods, as presented before the customs authorities for assessment, and is more evidential as against the calculated parameters for verifying the compliance with the definition of 'bituminous coal' as per sub-heading Note (2). The calculated values of calorific value, volatile matter in such cases as per Parr formula or tested parameters at the discharge port, contrary to the laid down parameters given by Parr formula have no evidentiary value. Therefore, we find that the confirmation of differential duty on such basis is not legally sustainable.

11.6 Further, in terms of subsequent instructions issued to the filed formations for testing / re-testing of samples, the department had clearly laid down that where the test reports are adverse or otherwise than the declared position, then opportunity for re-testing shall be allowed as a matter of trade facilitation. These have become binding obligations of trade facilitation measures, after India has entered into WTO Agreement on Trade Facilitation w.e.f. 22.02.2017. The extract of the said Circular No.30/2017-Customs, is given below:

Circular No.30 /2017-Cus

F. No. 450/15/2017-Cus IV
Government of India
Ministry of Finance
Department of Revenue
(Central Board of Excise & Custom)
****

New Delhi, dated the 18th July, 2017

To

All Principal Chief Commissioners/Chief Commissioners of Customs / Customs (Preventive),
All Principal Chief Commissioners/Chief Commissioners of Customs and Central Excise,
All Directors General,
All Principal Commissioners/Commissioners of Customs / Customs (Preventive),
All Principal Commissioners/ Commissioners of Customs and Central Excise.

Sir/Madam,

Sub: Detailed guidelines for re-testing of samples- reg.

World Trade Organization (WTO) negotiated Trade Facilitation Agreement (TFA), which aims at simplifying the trade processes and bringing down barriers to trade has come into force w.e.f 22nd February, 2017. India is a signatory to this agreement.

2) India has placed a number of trade related measures negotiated under the TFA in Category A. Article 5.3.1 envisages granting an opportunity for a second test in case the first test result of a sample taken upon arrival of goods declared for importation shows an adverse finding. Further Article 5.3.3 makes it obligatory to consider the result of the second test, if any, for the release and clearance of goods, and, if appropriate, may accept the results of such test. The aforementioned Articles have been placed in category A. In order to have uniformity in approach among the field formations with regard to re-testing of samples, the following procedure is prescribed:

a. Customs officers may draw the samples from import consignments for testing in case of consignments wherever needed. The results of all test reports, adverse or otherwise, shall be communicated to the importer or his authorized representative/ Customs Broker immediately on its receipt.

b. In case the importer or his agent intends to request the Additional/ Joint Commissioner of Customs for a re-rest, then the same shall be made in writing to the said officer within a period of ten days from the receipt of the communication of the test results of the first test. Customs officers may take a reasoned view in case the importer or his authorized representative Customs Broker is unable to do so for reasons beyond his control.

c. Where the Additional/Joint Commissioner of Customs grants an opportunity for a second test, he must clearly indicate in writing the name and address of the laboratory/ institution where the second test can be carried out. Such referral for re-testing may be made only after being reasonably sure that the desired re-testing facilities exist at the laboratory/ institution.

d. Re-test should be made only on the remnants of the samples originally tested or on duplicate representative sealed samples in the custody of the Customs. Further, to avoid delays, samples for second tests shall be marked as "immediate" before sending to the laboratory. In a case it may so happen that fresh samples have to be drawn, then such sampling should be done in the presence of the importer or his representative/customs broker.

e. The requests for re-test of samples on the ground that the original sample was not representative should be entertained only if the consignment is still in Customs control. At the time of drawing the samples, the importer or his representative shall be present and certify that the samples drawn are representative.

f. The competent authority shall consider the results of the re-test without prejudice to the results of the first test. In case there is a variation in the results of the first test and the re-test, the competent authority shall take the decision relying upon either of the tests specifying the grounds in writing for the decision so taken. In case the competent authority is unable to decide whether to rely upon the first or the re-test results, then it may order a second re-test provided the consignment is still within the customs control. However, this option should not be resorted to in every case of variation between the first test and re-test results.

g. The facility of re-testing, is a trade facilitation measure, which should generally not be denied in the ordinary course. However, there might arise circumstances where the customs officer is constrained to deny the re-testing facility. Board expects that such denial would be occasional and on reasonable grounds to be recorded in writing.

h. Where the re-testing procedure is done at the instance of the department instead of the importer, the above procedure shall be followed mutatis mutandis.

3) Difficulties, if any, in implementation of this circular, should be brought to the notice of the Board.

4) Hindi version of the circular will follow.

Yours faithfully,

(Zubair Riaz)
Director (Customs)

11.7 In terms of the aforesaid circular, and since no adverse test results obtained in CRCL test reports or in the calculation based on load port test reports, were neither communicated to the appellants before clearance of the imported goods, nor the remnant samples were offered either for re-testing, we are of the view that it is not feasible to arbitrarily fasten the duty liability subsequently on the basis of calculation, that too done without following the laid down Parr formula or other standard formula, if any, to state that laid down parameters have been met for classifying the product differently, and for demanding the differential duty.

12.1 The precise difference in the calculation adopted by the department giving varying results is for the following reasons, as demonstrated in the case of B/E No.7510536 dated 27.02.2012.

Factors as per Parr formula	***Calculation done by dept. at Pg.38***	***Appropriate calculation as worked out here***	***Reasons for variation***
$GCV_{ARB\ in\ Btu/lb}$	5662 X 1.8 = 10191.60	4551 X 1.8 =8191.80	GCV value was taken on ADB basis, instead of ARB basis
Sulphur $_{ARB}$	0.46_{ADB}	0.37 $_{ARB}$	Variables at $_{ADB}$ was taken instead of $_{ARB}$ basis
Ash $_{ARB}$	8.72_{ADB}	7.01 $_{ARB}$	

12.2 In aforesaid calculation of parameters required for sub-heading Note (2) to Chapter 27, it cannot be said that the adoption of Parr formula is fatally defective, as it has consistently produced results in 7 B/Es contrary to the values established in the impugned orders and in only in one case it had given the value limit of both parameters differently in support the Revenue's contention that the imported coal is bituminous coal. This is for the reason, that the Joint Director, Customs Laboratory, Jawaharlal Nehru Customs House, Nhava Sheva, Raigad vide letter F. No. JNCH/T.O./2012-13 dated 07.03.2013 had while confirming the applicability of Parr formula suggested by DRI, Ahmedabad, had mentioned that the "*values of Ash and Sulphur content etc. are to be applied on air dry basis (ADB)".* This means that by 'air drying' i.e., by undertaking process of partial drying of coal to bring its moisture near to equilibrium with the atmosphere in the laboratory/ room conditions, in which further reduction and division of the same will take place, the value of 'moisture and other variables such as ash, sulphur varies or disappears during such process. Whereas, in terms of the requirement for sub-heading note (2) to Chapter 27, the calorific value is required to be determined on Moist, mineral-matter-free basis. Therefore, as per ASTM D-388 at paragraph 9.5, such determination of calorific value on Moist, mmf basis should be inherent moisture containing basis, which is equivalent to the 'as-received-basis' (ARB) and not on 'air-dried-basis' (ADB). As could be seen in the model calculation adopted by the department at page nos. 42 & 43 above, and taken as the basis in the impugned orders, such adoption of values of ash, sulphur etc., on ARB basis, has artificially inflated the values for determining calorific value and volatile matter, which is contrary to the Parr formula and the explanation given in ASTM D-388 standards of methods for testing of coal samples. This is also explained in the various terminology used in describing the moisture in ASTM D-121 'Standard Terminology of Coal and Coke' as follows:

> ***Inherent moisture:*** *n—in coal, the moisture that exists as an integral part of the coal in its natural state, including water in pores, but not that present in macroscopically visible fractures. In some settings this term is incorrectly used to mean "residual moisture."*
>
> ***Residual moisture****: n—that moisture remaining in the sample after air drying. In some settings this may be referred to as "laboratory moisture" or "moisture in the general analysis sample."*
>
> ***Surface moisture****: n—that portion of total moisture in a coal lot*

or sample collected from a lot, core face channel, or other source that is in excess of inherent moisture.

***As-received basis**: n—analytical data calculated to the moisture condition of the sample as it arrived at the laboratory and before any processing or conditioning. If the sample has been maintained in a sealed state so that there has been no gain or loss, the as-received basis is equivalent to the moisture basis as sampled.*

Therefore, it logically flows that in order to determine the volatile matter limit of Coal (on a dry, mineral-mineral-matter-free basis) and calorific value of Coal (on a moist, mineral-matter-free basis), the proper values that is required to be taken is 'as-received-basis' (ARB) and not on 'air-dried-basis' (ADB), for applying the Parr formula. It is also to be noted that the assertion of Revenue that if the sample of coal is air-dried in oven at the required temperature, moisture in such sample is reduced to equilibrium moisture condition with the air in the laboratory, and hence it is nearer to inherent moisture, and therefore they had applied the same to Parr formula, does not find support for the following reason. As per ISTM D 3302, when a sample of coal is subjected to air-drying process, it removes water that can evaporate at or near ambient laboratory conditions, leaving in the coal sample some fraction of the inherent moisture, and not the entire inherent moisture, which is to be accounted for as such inherent moisture, which alone depicts the characteristics of the coal sample, being an integral part of the coal in its natural state. Therefore, the Parr formula has to be applied strictly as given in the technical literature and the same cannot be modified in order to suit a particular requirement.

12.3 Further, the argument of Revenue that since the appellants had entered into contract with foreign suppliers for determining the specification of coal *inter alia* on GCV (ARB) basis, for supply of impugned goods, for settling the commercial transactions; and hence the same shall be applied for determining the testing parameter limits as per sub-heading note (2) to Chapter 27, cannot be held as appropriate in our considered view, as the sale and purchase contracts (illustratively contract dated 18.06.2012) provide for specific clause 5 with 'Guaranteed Specifications' of various parameters including GCV_{ARB} is required to be much less than the threshold calorific value of 5833 kcal.kg.; and variations in GCV, there is a specific price adjustment clause 6 and similarly for ash, fines content too. Further, definition and meaning given in terms of the said sub-heading note (2)

has to be strictly construed as per the terms mentioned in the Indian Customs Tariff. Therefore, the calorific value limit is required to be determined on "moist, mineral-matter-free" basis and the volatile matter is required to be determined on "dry, mineral-matter-free" basis and not on any other basis, contrary to the statutory provision contained under such sub-heading note of the Customs Tariff Act, 1975.

12.4 In view of the above, and as we find that various decisions given by Co-ordinate Benches of the Tribunal in the relied upon cases, both by the learned Advocate for the appellants and the learned Special Counsel for Revenue, being different from the peculiar facts of this case, involving both sides agreeable to the determination of appropriate classification on the basis of sub-heading note (2) alone, we are unable to get any guidance from such relied upon decisions. In the case of *Reliance Infrastructure Ltd.* (supra), the values of GCV considered on ARB and ADB basis; in the case of *Coastal Energy Pvt. Ltd.* (supra), the facts indicate that the Tribunal has observed in paragraph 30 that there was no necessity to conduct any examination or test of the imported goods as the report submitted by the appellants themselves shows that the imported coal was as per specification given in sub-heading note. The relevant extract of the said paragraph in the Order of the Tribunal is quoted below:

> *"30. In the cases before us, there is no necessity to conduct any examination or test since the report submitted by the appellants themselves showed that the imported coal was as per the specification in the definition given in the sub-heading notes. It has to be stated that above exercise explained above is in line with Rule 6 of General Interpretative Rules and is in accordance with additional notes relating to headings and sub-headings."*

In the case of Maheswari Brothers (supra), the Tribunal has observed that they are considering the stay application and are not passing the final order on the disputed issue. Similarly, in *Kyori Oremin Ltd.,* (supra), the Hon'ble High Court of Gujarat has held that the order of the Tribunal dismissing the appeals of the petitioner on the question of pre-deposit would not survive and has not dealt with the main issue of classification of coal. Since the sub-heading note (2) to Chapter 27 appears in the HS nomenclature as well as in the Indian Customs Tariff, it is apparent that the same standard parameter limits are required to be applied worldwide in the course of international trade, for uniformity

in classification in terms of the 'International Convention on the Harmonized Commodity Description and Coding System' (HS Convention) to which India is also a signatory and the First Schedule to the Customs Tariff Act, 1975 providing classification of imported goods have adopted such HS coding system, up to six-digit level.

13.1 It is also important to note that in the Union Budget for the year 2023, through Section 126(c) of the Finance Act, 2023 w.e.f. 01.05.2023, the sub-heading entry CTH 270112 for 'Bituminous coal' has been further sub-divided into tariff entries of 'coking coal' and 'other coal' under CTI 2701 1210 and 2701 1290 respectively. This, in turn indicates that both the goods covered under both the above CTIs are required to fulfill the conditions of value limits as per sub-heading note (2) to Chapter 27, in terms of usage one could be for 'coking coal' and all other types of uses can be covered under 'other coal', including 'steam coal'. This would enable Central Government to prescribe effective rates of duties of customs, depending upon the policy prescription that is required for any industry, if deemed fit, like power generation etc., to serve the public interest or public purpose of providing affordable thermal power at reasonable rates. Though, the aforesaid amendment in the tariff items have been done in the year 2023, the essence of the same has been mentioned in the Budget Speech of the Hon'ble Finance Minister in the years 2012-2013 and 2013-2014, in the context of mis-classification for which the Central Government had provided the solution through rationalization of the Basic Customs duty rates. The extract of the same is given below.

Hon'ble Finance Minister in his budget speech for 2012-13 observed as follows :-

"Infrastructure

183. In the realm of infrastructure my proposals address some weaknesses in the troika of power, coal and railways.

184. Domestic producers of thermal power have been under stress because of high prices of coal. I propose to ease the situation by providing full exemption from basic customs duty and a concessional CVD of 1 per cent to Steam coal for a period of two years till March 31, 2014. Full exemption from basic duty is also being provided to the following fuels for power generation:

- *Natural Gas and Liquified Natural Gas; and*
- *Uranium concentrate, Sintered Uranium Dioxide in natural and pellet form."*

In the next years 2013-2014 Budget Speech the Hon'ble Finance Minister observed as follows :-

> *"166. Steam coal is exempt from customs duty but attracts a concessional CVD of one percent. Bituminous coal attracts a duty of 5 percent and CVD of 6 percent. Since both kinds of coal are used in thermal power stations, there is rampant misclassification. I propose to equalise the duties on both kinds of coal and levy 2 percent customs duty and 2 percent CVD."*

13.2 This has also been explained in the instructions issued by the Tax Research Unit in the Ministry of Finance for implementation of the budgetary changes vide D.O.F.No.334/ 3/2013-TRU dated 28.02.2013.

> *"Chapter 27*
> *27.1 The BCD on bituminous coal is being reduced from 5% to 2% and CVD from 6 % to 2 %. The BCD on steam coal is being raised from Nil to 2% and CVD from 1% to 2%. Hereafter, both steam coal and bituminous coal will attract a uniform rate of 2% BCD and 2% CVD. Notification No.12/2012-Cus, as amended by notification No. 12/2013-Customs refers. Changes are contained in S. Nos 122 A, 123 and 124 of the Table."*

Therefore, the argument that 'steam coal' or 'coking coal' or 'other coal' described so in terms of usage, is different from 'Bituminous coal' of CTI 2710 1200, and would be covered under such respective sub-heading given in the category of other coal under CTI 2710 1910/2710 1920, as per the erstwhile tariff prior to the above amendment, and not under 'bituminous coal' when they satisfy the parameters of sub-heading note (2), in order to claim the classification and duty concession would be incorrect. In other words, classification of coal as (i) Anthracite; (ii) Bituminous coal or (iii) Other coal, is on the basis of its stratification by rank, in terms of specified parameters of calorific value and volatile matter limits, which is given in sub-heading note (1) & (2) of Chapter 27; and further sub-classification of coal by usage as (i) cocking coal; (ii) Steam coal; (ii) other coal, used for other than the purposes of (i) & (ii) above, is in terms of its purpose of usage, and in certain cases specially prepared for usage in any particular industry.

13.3 Furthermore, in the year 2026, the Central Government had rationalized the tariff rates of all goods covered under Chapter headings 27.01, viz., Coal; briquettes, ovoids and similar solid fuels manufactured from coal; Chapter heading 27.02 viz., Lignite, whether or not agglomerated, excluding jet and 27.03 viz., Peat (including peat litter), whether or not agglomerated, and the rationalized tariff rate of 2.5% Basic Customs Duty (BCD) has been substituted in the First Schedule to the Customs Tariff, itself w.e.f. 01.05.2026 by Section 152(c)(ii) and Fifth Schedule to the Finance Act, 2026 (4 of 2026).

These measures taken by the Government have completely eliminated the disputes that had arisen on account of classification and varying rate of duty on account of the exemption provided under notification providing the description of goods and its coverage under Chapter/heading/sub-heading/tariff item.

14.1 From the above analysis, we are of the view that the impugned goods are to be classified under the sub-heading 270112 / CTI 2710 1200 as 'Bituminous coal' or under the CTI 2701 1920 as "Steam coal" being part of sub-heading 270119, on the basis of compliance with the definition provided under sub-heading note (2) to Chapter 27:

(i) Imported consignments of coal, where, as per the Load port test reports submitted by the appellants, (a) *calorific value limit determined on Moist, mineral-matter-free basis* were found to be equal or have exceeded 5833 kcal/kg.; and (ii) *volatile matter limit on a dry, mineral-matter-free basis* has exceeded 14%, then these are required to be categorized as 'Bituminous coal' and classified under CTI 2701 1200.

(ii) Imported consignments of coal, where, as per the Load port test reports submitted by the appellants, (a) *calorific value limit determined on Moist, mineral-matter-free basis* were found to be less than 5833 kcal/kg.; or (ii) *volatile matter limit on a dry, mineral-matter-free basis* is less than 14%, then these are required to be categorized depending upon its intended use, as 'Steam coal' and classified under CTI 2701 1920.

(iii) Imported consignments of coal, where, as per the discharge port test reports conducted by the department/CRCL test reports, certifying that the sample of imported coal "*has the characteristics of steam coal",* irrespective of the values arrived at for calorific value and volatile matter, being not conducted as per Parr formula and/or as per the laid down parameters of *volatile matter limit (on a dry, mineral-matter-free basis) and a calorific value limit (on a moist, mineral-matter-free basis), being in excess of the laid down parameters,* then these are required to be categorized as 'Steam coal' and classified under CTI 2701 1920.

14.2 Since the chemical test reports have not been made available or relied upon by the department, except in two cases of B/E No. 7510536 dated 27.07.2012; and B/E No. 8189651 dated 11.10.2012, the classification of impugned goods can be done on the basis of load port test reports only. Accordingly, in respect of B/E Nos. 7510536 dated 27.07.2012; and B/E No. 8189651 dated 11.10.2012, we are of the view that the impugned goods are classifiable under CTI 2701 1920 as 'Steam coal' based on the CRCL test reports conducted at the discharge port. Further, on the basis of detailed calculation worked out in terms Parr formula by taking the parameters provided in Load port certificates submitted by the appellants, in respect of imported goods covered under B/Es No. 8004800 dated 21.09.2012; 8600064 dated 27.11.2012; 6533813 dated 13.04.2012; 6837734 dated 16.05.2012; 7564900 dated 02.08.2012; and 8560556 dated 07.01.2013, since the *calorific value limit determined on Moist, mineral-matter-free basis* were found to be less than 5833 kcal/kg., we are of the considered view that these are appropriately classifiable as Steam coal' under CTI 2701 1920.

14.3 In view of the foregoing discussions and analysis of the legal provisions of the First Schedule to the Customs Tariff Act, 1975, we are of the considered opinion, that the impugned goods are appropriately classifiable as described in paragraph 14.1 & 14.2 above. Therefore, the impugned orders dated 28.02.2014, 14.03.2014, 25.04.2014 and 29.04.2014 passed by the learned Commissioners of Customs in re-classifying the impugned goods under CTI 2701 1200 cannot stand the scrutiny of law.

ISSUE RELATING TO EXEMPTION FROM PAYMENT OF BASIC CUSTOMS DUTY:

15.1 From the facts of the case, it is also indicated that the appellants have claimed the duty exemption from payment of BCD vide serial No. 123 of Notification No.12/2012-Customs dated 17.03.2012, as amended. The relevant extract of the said notification and the entry are given below:

> *"In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 21/2002-Customs, dated the 1st March, 2002 Published in the Gazette of India,*

Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 118(E) dated the 1st March, 2002, except as respects things done or omitted to be done before such supersession, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below or column (3) of the said Table read with the relevant List appended hereto, as the case may be, and falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as are specified in the corresponding entry in column (2) of the said Table, when imported into India,-

(*a) from so much of the duty of customs leviable thereon under the said First Schedule as is in excess of the amount calculated at the standard rate specified in the corresponding entry in column (4) of the said Table;*

(b) from so much of the additional duty leviable thereon under sub-section (1) of section 3 of the said Customs Tariff Act 1975 (51 of 1975) as is in excess of the additional duty rate specified in the corresponding entry in column (5) of the said Table, subject to any of the conditions, specified in the Annexure to this notification, the condition number of which is mentioned in the corresponding entry in column (6) of the said table.

TABLE

S. No.	Chapter or Heading or sub-heading or tariff item	Description of goods	Standard rate	Additional duty rate	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)
xx	xx	xx	xx	xx	xx
123	27011920	Steam Coal	Nil	1%	-
xx	xx	xx	xx	xx	xx"

15.2 In the present factual matrix of the case, since the impugned goods viz., "steam coal" has been specifically covered by CTI 2701 1920 in the entry at Serial No.123 of Notification No.12/2012-Custopms dated 17.03.2012, these alone are eligible for exemption from BCD. However, bituminous coal covered under CTI 2701 1200, even though may be used as steam coal are not covered under the above exemption entry in terms of the tariff item, and hence such exemption benefit will not be extendable to these goods covered under CTI 2701 1200.

15.3 In terms of our discussions in the preceding paragraphs and upon detailed examination of the impugned goods, as we have come to the conclusion that the imported goods in all eight B/Es are appropriately classifiable under CTI 2701 1920, and inasmuch as the impugned goods are covered both by description and the coverage of tariff item,

we find no grounds for denial of such concession on the importation of impugned goods. Therefore, we find that the adjudged duty demands on account of denial of duty exemption does not sustain. Since the duty demands itself does not survive, on the basis of our discussions and findings on the merits of the case, we do not find any necessity for examining the other issues of deliberate mis-declaration on the part of appellants with an intention to evade duty for invoking extended period of limitation, mis-declaration under Section 111 *ibid* as well as for confiscation of goods and for imposition of penalty. Thus, we do not find any sufficient reason to sustain imposition of penalty on the appellants or for taking any penal action on the imported goods.

16. In the result, the impugned orders dated 28.02.2014, 14.03.2014, 25.04.2014 and 29.04.2014 passed by the learned Commissioners of Customs are set aside and the appeals filed by the appellants are allowed in their favour.

17. Miscellaneous applications are disposed of accordingly.

(Order pronounced in the open court on 02.11.2026.)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM