IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH - COURT NO.1

Customs Appeal No.75889 of 2017

(Arising out of Order-in-Appeal No.10/CUS/CCP/2017 dated 28.02.2017 passed by Commissioner(Appeals), Central Excise, Customs & Service Tax, Bhubaneswar.)

M/s. Odisha Mining Corporation Limited

(OMC House, Bhubaneswar-751001, Odisha.)

...Appellant

VERSUS

Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-I

.....Respondent

(CR Building, Rajaswa Vihar, Bhubaneswar, Odisha.)

APPEARANCE

Shri K.K.Acharya, Advocate for the Appellant (s) Shri S.Debnath, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI ASHOK JINDAL, MEMBER(JUDICIAL) HON'BLE SHRI RAJEEV TANDON, MEMBER(TECHNICAL)

FINAL ORDER NO. 77452/2023

DATE OF HEARING : 3 November 2023 DATE OF DECISION : 3 November 2023

Per: ASHOK JINDAL:

The appellant is in appeal against the impugned order wherein the refund claim has been rejected.

2. The facts of the case are that the appellant entered into contract with overseas buyer M/s S.K.Resources Ltd. for sale of 63,200 MT of Iron Ore Fines. They filed Shipping Bill No.00587/IOF/2007-08 dated 06.12.2008 for Customs clearance of export goods. The Shipping Bill was assessed provisionally on 06.12.2008. On 07.12.2008, Notification No.129/2008-Cus dated 07.12.2007 came into force which exempted Iron Ore Fines from export duty. The shipment of cargo was made on

18.12.2008. Since the shipment was done after 07.12.2008, the appellant presuming that no duty is payable on export of Iron Ore filed the refund claim on 30.12.2008 for an amount of Rs.97,15,062/-. The said amount was paid by the appellant during filing of the Shipping Bill. The said refund claim was returned back to the appellant on the ground that the Shipping Bill was not assessed finally. Thereafter they filed refund claim again on 10.02.2009, which was again returned back to them. The said refund claim was returned on the premise that vide letter dated vide letter dated 15.09.2009 stating that the refund claim is pre-mature and Shipping Bill was not assessed till yet. The appellant received a letter dated 08.01.2013 stating that the Shipping Bill has already been finally assessed on 14.03.2009. Thereafter, the refund claim was submitted for consideration. The refund claim was rejected holding that as the Shipping Bill was assessed on 06.12.2008 and the let export order (LEO) was given on 06.12.2008 and on the said date, the appellant was liable to pay duty on export of Iron Ore Fines, in that circumstances, refund claim is not maintainable. Against the said order, the appellant is before the Tribunal.

- 3. The Ld.Counsel for the appellant drew the attention to the Shipping Bill showing that the appellant has not paid export duty on 06.12.2008 and the same was finally paid on 08.12.2008, in that circumstances, before payment of duty let export order cannot be issued. It is his submission that let export order although mentions date 06.12.2008, but same is fabricated, and further before 08.12.2008 as no let export order can be issued, and on the said date no duty was payable on export of Iron Ore Fines, therefore, they are entitled for refund claim.
- 4. On the other hand, the Ld.AR for the department supported the adjudication order.
- 5. Heard the parties, considered the submissions.
- 6. For better appreciation of the facts of the case to decide the issue whether export took place on 06.12.2008 or 08.12.2008, the Shipping Bill is extracted below:-

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- 7. On going through the Shipping Bill, we find that it is clearly mentioned that differential cess of Rs.29,499/- was debited from the PLA vide Entry Sl.No.13 dated 08.12.2008, the said fact has been verified by the Inspector putting his initial dated 08.12.2008. Further, we have gone through the order of let export order, which is having some fabrication on face of it where some cutting is there thereafter signature was put and date of 06/12 was mentioned. It is undisputed fact that let export order cannot be issued before payment of full duty by the assessee, in that circumstances, it cannot be said that let export order was issued to the appellant on 06.12.2008. Therefore, the date of let export order is to be taken as 08.12.2008.
- 8. In that circumstances, as iron ore fines were exempted from payment of duty vide Notification No.129/08 dated 07.12.2008, no duty was payable on 08.12.2008, therefore, the appellant was not liable to pay duty. Accordingly, the appellant is entitled for the refund claim of the duty paid.
- 9. In that view of the fact, we set aside the impugned order and allow the appeal with consequential relief, if any.

(Operative part of the order was pronounced in the open Court.)

Sd/

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/

(RAJEEV TANDON)
MEMBER (TECHNICAL)

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