

**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 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:-

OMC PARADEEP

ANNEXURE-9

U6/22222238

p.1

-14

**EXPORT BILL FORM FOR EXPORT OF DUTY FREE GOODS**

Duplicate

Exporter <b>ORISSA MINING CORPORATION LIMITED</b> OMC HOUSE, BHUBANESHWAR-751001 ORISSA, INDIA		Invoice No. & Date <b>110016.12.08</b>		SB No. & date <b>00058 / Iron Ore</b> <b>2008-2009</b>	
Consignee <b>SK RESOURCES LIMITED, 2601, 26/5</b> <b>THE METROPOLIS TOWER, 10 METROPOLIS</b> <b>DRIVE, HONGKONG, KOWLOON, HONG KONG</b>		AR/ARAA No. & Date <b>N/A</b>		Import-Export Code No. <b>2300000000</b>	
Custom House Agent <b>SELF</b>		LIC No.		Export Trade Control <b>GR NO. AV 947014</b> <b>PAN &amp; BIN NO.</b> <b>AAA C03324L FT-001</b>	
Pre-Carriage by <b>RAIL</b>		Piece of Receipt by Fre. Carrier <b>PARADIP PORT FLOT</b>		If export under: Deferred Credit [ ] Joint Ventures [ ] Ropes Credit [ ] Others [ ] RBI's Approval No. & Date	
Vessel/Flight No. <b>M.V. RENUAL</b>		Retention No. <b>Exp-525/2008 Dt. 3.12.2008</b>		Type of shipment Outright Sale [ ] Consignment Export Other <b>sale contract</b> (Specify)	
Port of Discharge <b>JINGJIANG PORT OR CAFFEIDIAN PORT, CHINA</b>		Port of Loading <b>PARADIP PORT, INDIA</b>		Nature of Contract: CIF [ ] / CFR [ ] / FOB [ ] Others (Specify)	
Marks & Nos. <b>NIL</b>		No & Kind of Pkgs. <b>IN BULK</b>		Exchange Rate US 14 of CA <b>US \$1 = Rs. 49.40</b>	
S. No. <b>1</b>		Statistical Code & Description of Goods <b>IRON ORE FINES</b> <b>HS NO. 2601140</b> <b>MATERIAL NO. INHES 1UFE6260</b> <b>IRON ORE FINES 60-62%FE</b>		Quantity <b>63,700 MT</b>	
Net Weight <b>58207.20 DMT</b>		Gross Weight <b>63200 MT</b>		Value Ft. <b>US\$ 24,58,366.677</b>	
Total FOB Value in Words <b>Twelve Crores fourteen lakh thirtyeight thousand two hundred and seventyfive only</b>		P.D. BOND NO. <b>337 / 2008-09 Dt. 08.12.2008</b> TEST MARK NO. <b>259 / 2008-09 Dt. 08.12.2008</b>		Proportionally assessed Pending T/R	
Analysis of Export Value Currency: <b>US\$</b>		Amount <b>12,14,38,275.00</b>		Full export value OR where not ascertainable, the value which exporter expects to receive on the sale of goods. Currency: <b>US\$ 24,58,366.677</b> Amount: <b>Rs. 12,14,38,275.00</b>	
FOB Value <b>24,58,366.677</b>		Freight <b>0</b>		Insurance <b>0</b>	
Commission <b>0</b>		Other Deductions <b>0</b>		Total <b>24,58,366.677</b>	
SI. No. <b>1</b>		Export Tariff No. <b>121438275</b>		Assessable Value under Sec. 14 CA <b>Rs. 9715062</b>	
Rate <b>1%</b>		Amount <b>Rs. 97150.62</b>		Duty <b>Rs. 63200</b>	
Rate <b>2%</b>		Amount <b>Rs. 126401.24</b>		Superduty <b>Rs. 9778262</b>	
Rate <b>1%</b>		Amount <b>Rs. 63200</b>		Cess <b>Rs. 126401.24</b>	
Total <b>Rs. 9780158</b>		Total <b>Rs. 9780158</b>		Duty, Cess, Ed. Cess <b>Rs. 126401.24</b> <b>Rs. 63200</b> <b>Rs. 9778262</b>	
Total Duty / Cess Amount in words: <b>thirtysix lakh eighty thousand and fiftyeight only</b>		Total Duty / Cess Amount in words: <b>thirtysix lakh eighty thousand and fiftyeight only</b>		Declaration: I/We declare that all particulars given herein are true and correct I/We also attach the declaration(s) under clause No. (c) dated:	
Public Notice No.		dated:		Superintendent <b>ORISSA MINING CORPORATION</b> <b>PARADIP</b> Signature & Date <b>Authorized Signatory</b>	

SHIPPING BILL FOR EXPORT OF DUTIABLE GOODS

Duplicate 73

Documents Submitted	
1 Invoice	
2 Packing List	
3 GR Form	
4 AR-4/AR-4A Form	
5 ETC Licence	
6 Indent	
7 Acceptance of Contract	
8 Letter of Credit	
9 DC Certificate	
10 Port Trust Document	
11 Any other (Specify)	

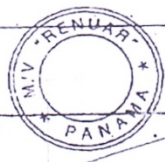
LET EXPORT  
 Let export given for 63,200 MT @  
 Signature: [Signature]

ALLOWED FOR SHIPMENT  
 [Signature]  
 15-12-08  
 Inspector

Voyage name may be entered after check with original Bill of Lading  
 Entry for: [Handwritten text]  
 Fee Rs. Customs, Paradeep

Fresh one may be granted to  
 for the portion shorted or not shipped

Handed over to C.W.A. / Party: [Blank]  
 Contents Received on Board: 63,200 MT  
 Date: 18/12/08  
 Date of Shipment: 18/12/08  
 Qty: 63,200 MT  
 Assst. Collector: [Signature]  
 Master of Vessel: [Signature]  
 Cashier: [Signature]



RECEIVED IN DOCK APPRAISEMENT (DA)  
 SECTION VIDE R. SL. NO. 691  
 DT. 05-12-08 TIME 12:00 hrs

Supdt./Supd. Appr:  
 PL examine the goods  
 & check declaration with  
 the S/Bill and allow  
 if found in  
 [Signature]  
 Superintendant  
 Customs, Paradeep  
 About 63,200 BMT  
 at 10 Footplot No. AB  
 200-460 was presented  
 for examination  
 Let export be  
 [Signature]

EXAMINER'S INSPECTION:  
 PLEASE EXAMINE THE GOODS FOR  
 APPRAISEMENT IN PRESENCE SUPDT.  
 (DA). CHECKED THE DECLARATION IN S/  
 B OR BIE WITH GOODS. STATE THE  
 PHYSICAL APPEARANCE (COLOUR,  
 TEXTURE, ODOUR ETC.) DRAW  
 REPRESENTATIVE SAMPLE IN  
 PRESENCE OF IMPORTER/EXPORTER IF  
 ORDERED SUBMIT A REPORT  
 GOODS EXAMINED IN PRESENCE OF  
 SUPDT. (DA). FOUND NOT FOUND  
 ALLIED WITH DECLARATION IN BIE OF  
 S/B. GOODS APPEARS [Handwritten text]  
 COLOUR [Handwritten text] TEXTURE [Handwritten text]  
 ODOUR [Handwritten text] REPRESENTATIVE SAMPLE  
 DRAWN IN PRESENCE OF IMPORTER/  
 EXPORTER. GOODS MAY BE ALLOWED  
 FOR LET EXPORT/PASS OUT OF  
 CUSTOMS CONTROL

[Signature]  
 Inspector  
 Customs, Paradeep  
 [Signature]  
 Superintendant  
 Customs, Paradeep

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)**