CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Division Bench
Court – I

Appeal No. C/1532 & 1533/2010

(Arising out of Order-in-Appeal No. 04 & 05/2010 (V) CH dated 26.02.2010 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Visakhapatnam)

Commissioner of Central Excise, Customs & Service Tax, Visakhapatnam - CUS **.....Appellant(s)**

Vs.

M/s Mideast Integrated Steels Ltd., **.....Respondent(s)**

Appearance
Shri Guna Ranjan, Superintendent (AR) for the Appellant.
Shri J.M. Sharma, Authorized Representative for the Respondent.

Coram:
Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)
Hon'ble Mr. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 23/10/2018
Date of Decision: 13/11/2018

FINAL ORDER No. A/31416-31417/2018

[Order per: P. Venkata Subba Rao]

Both these appeals are filed by the Revenue against the Orders-in-Appeal Nos. as follows:

Appeal No.	Appellant (s)	Respondent (s)	Impugned Order
C/1532/2010	CC, CE & ST, Visakhapatnam	M/s Mideast Integrated Steels Ltd.,	OIA No. 04/2010(V) CH dated 26.02.2010
C/1533/2010			OIA No. 05/2010 (V) CH dated 26.02.2010

2. The Respondent herein is an exporter of iron ore fines and filed shipping bills for export of iron ore fines which were chargeable to duty @ 15% ad valorem on the FOB basis. As per the invoice, the export of iron ore value was @183.75 Per MT on C&F basis. Accordingly, they paid export duty and goods were exported. Thereafter, the respondent realized that they had wrongly mentioned the wet weight in the invoice and shipping bills. As per the sale agreement, the price was USD 138.75 per DMT FOB. Thus, it was found that excess export duty was paid by mentioning more quantity than was actually exported. Accordingly, they filed refund applications seeking refund of the excise export duty paid by them. After following due process of law, the lower authority rejected the refund claim on the ground that the initial assessment order had reached the finality and it has not been challenged in the appeal proceedings. He, therefore, reasoned that as per the decision of the Hon'ble Supreme Court of India in the case of Collector of Central Excise, Kanpur Vs. Flock (India) Pvt. Ltd., [2000 (120) ELT 285 (S.C)] the refund was liable to be rejected as the assessment has not been challenged or reopened. Aggrieved by the order rejecting the refund claims, the respondent herein preferred an appeal before the First Appellate Authority who allowed their appeals. Another point of contention in the refund claims is that it was the policy of the Government to treat FOB price as cum duty price as per CBEC Circular No. 18/2008 dated 10.11.2008. This circular, inter alia, reads as follows:

> *"In view of the above, a policy decision has been taken that till 31.12.2008, the existing practice of computation of export duty and cesses by taking the FOB price as the cum-duty price may be continued. All pending cases may be finalized accordingly.It has also been decided that with effect from 1st January, 2009, the practice of computation of export duty shall be changed. The purposes of calculation of export duty, the transaction value, that is to*

say price actually paid or payable for the goods for delivery at the time and place of exportation under Section 14 of the Customs Act, shall be the FOB price."

The respondent has also claimed refunds on this count since their exports were affected prior to 31.12.2008 on the ground that the practice of treating FOB value as cum duty price envisaged in the Board Circular applies to them as well. This contention was also not accepted by the lower authority but was accepted by the First Appellate Authority.

3. It is the contention of the Revenue in these appeals that the First Appellate Authority has wrongly allowed the benefit of this circular dated 10.11.2008 as the export has already taken place before the circular was issued and there was no pending issue of assessment. The Board's circular clearly mentions that all pending issues may be decided accordingly and the issue of assessment was neither pending nor open. Therefore, the First Appellate Authority should not have extended the benefit of this circular to the exporter.

4. It is also the contention of the Revenue that the shipping bills had been finally assessed and therefore the ratio of the judgments of the Hon'ble Apex Court in the case of *Priya Blue Industries Ltd., Vs. CC (Prev.)* [2004 (172) ELT 145 (S.C.)] and Flock India Pvt. Ltd., [2000 (120) ELT 285 (S.C.)] squarely apply as the assessments were not challenged nor reopened and the refund could not have been sanctioned.

5. Learned Departmental Representative reiterated the above submissions and the findings in the Order-in-Original and argued that the First Appellate Authority has clearly erred in giving the benefit of CBEC Circular No. 18/2008-Cus as well as in allowing the refund without reassessment of the shipping bill in this case.

6. Learned Counsel for the appellant argued that the ratio of the judgment of Flock India P. Ltd., and Priya Blue Industries Ltd., do not apply in this case as there was no appealable assessment order which they could have challenged. In fact, a mistake was committed by them in the shipping bills which was also not corrected by the authorities and the assessment was completed. The issue here is not of reopening the assessment but only correcting clerical or arithmetical mistakes in the shipping bills in the form of (a) indicating the wet weight instead of dry weight and (b) in paying the duty on the FOB value when the standard practice during the period, as confirmed by the CBEC Circular No. 18/2008-Cus was to pay duty taking the export value as cum duty price. He, therefore, asserted that the First Appellate Authority has correctly rectified these defects and allowed them refund.

7. We have considered the arguments on both sides and perused the records. In the case of *Sameera Trading Company* [2011 (264) ELT 578 (Tri-Bang.)] (in which one of us, Shri M.V. Ravindran was a member) identical issue related to the CBEC Circular No. 18/2008-Cus dated 10.11.2008 was under consideration. In that case also duty was assessed contrary to the existing practice by taking FOB

value as transaction value while the practice during the period was to take the value FOB value as cum duty value. The Commissioner (Appeals) had allowed the benefit of CBEC Circular No. 18/2008 invoking the provisions of Section 154 of Customs Act, 1964 and allowed refund and the Revenue's appeal against this order of the First Appellate Authority was dismissed by the Tribunal. The case in hand is identical to the case of the *Sameera Trading & Co.* (supra) and we find no reason to take a different view in this case. We, therefore, find that as was the established practice during the relevant period as confirmed by the CBEC Circular No. 18/2008-Cus the respondent was entitled to the benefit of cum duty value during the relevant period. On the question of reassessment being necessary for claiming the refund we find that in this case there is no requirement of reassessment as there were only clerical and arithmetical errors in the shipping bill namely (a) taking the wet MT iron ore instead of the dry MT and (b) taking the transaction value for calculating export duty instead of taking this as the cum duty value. Both these defects can be easily corrected under Section 154 Customs Act, 1964 which reads as follows:

"Section 154 of the Customs Act, 1962

> **Section 154. Correction, clerical errors, etc.**—Clerical or arithmetical mistakes in any decision or order passed by the Central Government, the Board or any officer of customs under this Act, or errors arising therein from any accidental slip or omission may, at any time, be corrected by the Central Government, the Board or such officer of customs or the successor in office of such officer, as the case may be.

8. In view of the above, we find no infirmity in the First Appellate Authority sanctioning the refund while correcting to clerical

or arithmetical mistakes in the Shipping Bills. We hold that the impugned orders do not need any interference.

9. The impugned orders are upheld and the appeals are rejected.

(Order pronounced on 13/11/2018 in open court)

P. VENKATA SUBBA RAO
MEMBER (TECHNICAL)

M.V. RAVINDRAN
MEMBER (JUDICIAL)

Lakshmi....