

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT No. III

Customs Appeal No. 42447 of 2015

(Arising out of Order-in-Original No. 01/2015 dated 10.09.2015 passed by Commissioner of Customs, No. 1, Williams Road, Cantonment, Tiruchirappalli – 620 001)

M/s. JSW Steel Ltd.

Pottaneri, Mecheri,
Mettur Taluk,
Salem – 636 453.

...Appellant

Versus

Commissioner of Customs

Trichy Commissionerate,
No. 1, Williams Road,
Cantonment,
Tiruchirappalli – 620 001.

...Respondent

APPEARANCE:

For the Appellant : Mr. M.S. Nagaraja, Advocate

For the Respondent : Ms. O.M. Reena, Authorised Representative

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No. 40342 / 2026

DATE OF HEARING : 10.09.2025

DATE OF DECISION : 10.03.2026

Per Mr. VASA SESHAGIRI RAO

This Appeal is directed against Order-in-Original No. 01/2015 dated 10.09.2015 passed by the Commissioner of Customs, Tiruchirappalli, whereby the benefit of exemption under Notification No. 21/2002-Cus dated 01.03.2002 (as amended by Notification No. 12/2012-Cus dated 17.03.2012) was denied in respect of coal imported

under Bill of Entry No. 5919332 dated 06.02.2012, differential duty of Rs. 1,06,43,194/- was demanded under Section 28 of the Customs Act, 1962 along with interest under Section 28AB read with Section 28AA, while proceedings in respect of the remaining five Bills of Entry were dropped.

1.2 The facts briefly stated are that the Appellant is engaged in manufacture of iron and steel and had imported Hard Coking Coal of Australian origin through Karaikal Port under six Bills of Entry during the period 30.08.2011 to 28.03.2012. The goods were declared as "Coking Coal" under CTH 2701 19 10 and exemption from Basic Customs Duty was claimed under Sl. No. 68 of Notification No. 21/2002-Cus as amended. The goods were provisionally assessed under Section 18 pending test reports.

1.3 Samples were drawn and sent to the Chemical Examiner, Custom House, Chennai. The Chemical Examiner reported Crucible Swelling Number (CSN) above 1 in all cases but did not report Mean Reflectance (MR) for want of facility. The Assistant Commissioner finalized the provisional assessments accepting the classification as Coking Coal and extended exemption based on CSN reported by Customs Laboratory and MR as per load port surveyor's certificate.

1.4 Thereafter, the Commissioner issued Show Cause Notice dated 13.06.2013 proposing denial of exemption for all six Bills of Entry primarily on the ground that MR had not been ascertained from Customs laboratory and that CSN values as per load port reports were not reliable. Subsequently, remnant samples were sent to CIMFR, Dhanbad, which reported MR of 1.59 and CSN of 0.5 in respect of Bill of Entry No. 5919332 dated 06.02.2012. Relying on this report, the Commissioner denied exemption only for that Bill of Entry while dropping proceedings for the remaining five.

2. Aggrieved by the order, the Appellant is in Appeal before the Tribunal.

3. The Ld. Advocate Mr. M.S. Nagaraja appeared on behalf of the Appellant and advanced detailed submissions in support of the Appeal and the Ld. Authorized Representative Ms. O.M. Reena, appeared for the Revenue and defended the Impugned Order.

4. The Learned Advocate appearing for the Appellant made the following submissions which are summarized as below: -

4.1 The impugned order is beyond the scope of the Show Cause Notice. The SCN neither relied upon nor referred to the CIMFR reports, which were obtained much later. It is contended that reliance upon material not forming part of the SCN vitiates the adjudication. Reliance was placed upon *Caprihans India Ltd. v. CCE 2015 (325) ELT 632 (SC)*, *CC v. Toyo Engineering India Ltd. 2006 (201) ELT 513 (SC)*, and *CCE v. Ballarpur Industries Ltd. 2007 (215) ELT 489 (SC)*.

4.2 It was further submitted that the Chemical Examiner had reported CSN of 3. The load port certificate issued by ACIRL Quality Testing Services Pty Ltd reported CSN of 1.5 and MR of 1.75. These satisfied the twin parameters under the Notification, namely MR above 0.60 and CSN above 1. There was no reason to reject these reports. Reliance was placed upon *TATA Chemicals Ltd. v. CC 2015 (320) ELT 45 (SC)* to contend that chemical testing by the department must be supported by valid reasons.

4.3 The CIMFR testing was conducted more than two years after drawal of samples and after issuance of SCN. It is contended that coal properties deteriorate over time due to oxidation and weathering, which affects CSN. Reliance was placed upon *Ruchi Soya Industries 2006 (193) ELT 499 (Tri.)*, *Godrej Industries 2017 (357) ELT 899 (Tri.)* and

Dunlop India Ltd. 1983 (13) ELT 1566 (SC) to submit that goods must be assessed in the condition in which they are imported.

4.4 It was additionally argued that once provisional assessment was finalized under Section 18(2) and not reviewed under Section 129D, issuance of SCN under Section 28 is not sustainable. Reliance was placed upon *Priya Blue Industries 2004 (172) ELT 145 (SC)* and *Flock (India) Pvt. Ltd. 2000 (120) ELT 285 (SC)*.

5.1 *Per Contra*, the Ld. Authorized Representative submitted that exemption notification prescribes strict compliance of twin conditions of MR above 0.60 and CSN above 1. The Chemical Examiner had not reported MR. Therefore, finalization of assessment without ascertaining MR from authorized laboratory was improper.

5.2 It was contended that CIMFR is a premier government laboratory and its report shows CSN of 0.5, which is below the prescribed limit. Therefore, the goods do not qualify as Coking Coal. The respondent supports the findings recorded in paragraphs 18 to 23 of the impugned order and submitted that exemption being conditional must be strictly construed.

5.3 It was further contended that Section 28 proceedings are maintainable even after finalization of provisional assessment in cases of short levy, and reliance was placed upon the reasoning recorded in paragraph 24 of the impugned order.

6. We have carefully heard the submissions advanced by both sides, examined the appeal records in detail, and the case Laws cited.

7. Upon consideration, the following issues arise for determination: -

- i. Whether the impugned order travelled beyond the scope of the Show Cause Notice by relying upon CIMFR reports not referred to therein.
- ii. Whether the coal imported under Bill of Entry No. 5919332 dated 06.02.2012 satisfied the conditions of exemption under Notification No. 21/2002-Cus as amended.

Whether the impugned order has travelled beyond the scope of the Show Cause Notice by relying upon CIMFR test reports not referred to therein?

8.1 The Show Cause Notice dated 13.06.2013 and the impugned Order-in-Original No. 01/2015 dated 22.09.2015 have been carefully examined in their entirety in

order to determine whether the adjudication has remained within the four corners of the notice issued to the Appellant.

8.2 We note that the jurisdictional validity of any adjudication must be tested strictly on the allegations and grounds contained in the Show Cause Notice, since it is a settled proposition of law that the notice constitutes the foundation of the proceedings and circumscribes the permissible scope of adjudication.

8.3 We observe that a plain reading of the Show Cause Notice reveals that the primary allegations were limited to two aspects, namely, that the provisional assessment was finalized without obtaining Mean Reflectance (MR) from a laboratory having requisite facility, and that the Crucible Swelling Number (CSN) values in the load port survey reports were allegedly unreliable based on certain extracts from the text "Coal Geology" by Larry Thomas.

8.4 We find that the Show Cause Notice does not contain any reference whatsoever to testing conducted by the Central Institute of Mining and Fuel Research (CIMFR), Dhanbad. We note that the notice neither states that remnant samples were sent to CIMFR nor annexes any report indicating that CSN was below 1. We further observe that the

notice does not allege that any subsequent scientific testing demonstrated non-fulfilment of conditions of the notification.

8.5 We observe that the impugned order, however, proceeds entirely on the basis of CIMFR's report dated 19.03.2014 which indicates CSN of 0.5 in respect of Bill of Entry No. 5919332 dated 06.02.2012. We find that paragraphs 18 to 23 of the impugned order rely substantially on this belated report. We therefore find that the decisive evidentiary foundation of the impugned order is a document not forming part of the Show Cause Notice.

8.6 We find that the Appellant has relied upon the judgments of the Hon'ble Supreme Court in *CCE v. Ballarpur Industries Ltd. 2007 (215) ELT 489 (SC)*, *CC v. Toyo Engineering India Ltd. 2006 (201) ELT 513 (SC)*, and *Caprihans India Ltd. v. CCE 2015 (325) ELT 632 (SC)*, to contend that adjudication cannot travel beyond the show cause notice. We note that these authorities unequivocally lay down that the notice is the foundation of the proceedings and that no new ground can be introduced at the stage of adjudication.

8.7 We observe that the Department contended that the CIMFR reports were furnished during the adjudication

and that the Appellant was given an opportunity to rebut the same. We find that this submission does not cure the fundamental defect because the infirmity here is jurisdictional in nature and not merely procedural. We note that the adjudicating authority cannot retrospectively expand or substitute the foundation of the Show Cause Notice. The mere supply of documents during adjudication cannot substitute a proper allegation in the Show Cause Notice.

8.8 We further observe that the original basis in the Show Cause Notice, namely reliance on the text "Coal Geology" for CSN 8+, has been expressly rejected by the adjudicating authority in paragraph 19 of the impugned order. We find that after discarding the very ground contained in the Show Cause Notice, the authority has proceeded to confirm the demand solely on the basis of CIMFR's report, which was never proposed in the notice.

8.9 We note that the CIMFR reports are dated 31.01.2014 and 19.03.2014, whereas the Show Cause Notice is dated 13.06.2013. We observe that the chronological sequence itself establishes that the CIMFR reports could not have formed part of the foundation of the notice.

8.10 We find that the adjudicating authority has thus substituted the original grounds of the Show Cause Notice with a new evidentiary basis. We observe that such substitution is impermissible in law and contrary to the binding precedents cited by the Appellant.

8.11 We therefore find that by substituting the original grounds in the Show Cause Notice with reliance upon CIMFR reports, the adjudicating authority has travelled beyond the scope of the notice and rendered the order unsustainable.

8.12 We accordingly hold that the reliance on CIMFR test reports not referred to in the Show Cause Notice renders the impugned order legally unsustainable.

Whether the coal imported under Bill of Entry No. 5919332 dated 06.02.2012 satisfied the conditions of exemption under Notification No. 21/2002-Cus as amended?

9.1 We find that the relevant exemption under Sl. No. 68 of Notification No. 21/2002-Cus as amended prescribes two cumulative conditions, namely that Mean Reflectance (MR) must exceed 0.60 and Crucible Swelling Number (CSN) must be 1 or above.

9.2 We note that at the time of import the contemporaneous evidence comprised the Certificate of Quality dated 17.01.2012 issued at the load port by ACIRL Quality Testing Services Pty Ltd reporting CSN 1.5 and MR 1.75, and the Test Report dated 02.04.2012 of the Chemical Examiner, Customs House, Chennai reporting CSN 3.

9.3 We observe that both contemporaneous CSN values were above the prescribed threshold of 1 and that the MR reported at load port was 1.75, which is significantly higher than the required 0.60. We further note that even as per the subsequent CIMFR report, the MR value is 1.59, which also satisfies the notification requirement.

9.4 We find that the dispute pertains only to the CSN value of 0.5 reported by CIMFR more than two years after drawal of samples. We observe that the Appellant has relied upon technical literature explaining that coal is hygroscopic and that oxidation and weathering may result in deterioration of caking properties over time.

9.5 We note that the Appellant has relied upon the judgment of the Hon'ble Supreme Court in *Dunlop India Ltd. v. Union of India 1983 (13) ELT 1566 (SC)*, wherein it was

held that classification must be determined based on the condition of goods at the time of import.

9.6 We observe that the Appellant has further relied upon the decisions of this Tribunal in *Ruchi Soya Industries 2006 (193) ELT 499 (Tri.-Bang.)* and *Godrej Industries Ltd. 2017 (357) ELT 899 (Tri.)* to contend that belated testing which may be affected by passage of time cannot override contemporaneous evidence.

9.7 We find that the CIMFR testing was conducted more than two years after the samples were drawn. We observe that the impugned order does not record any finding regarding storage conditions of remnant samples during this prolonged period. We note that there is no material on record to show that the samples were preserved in conditions preventing oxidation.

9.8 We observe that the Chemical Examiner's report dated 02.04.2012 reporting CSN 3 has not been rejected on any cogent or scientific ground. We find that neither the Show Cause Notice nor the impugned order demonstrates any infirmity in that report.

9.9 We note that the Appellant has relied upon *TATA Chemicals Ltd. v. CC 2015 (320) ELT 45 (SC)*, wherein the Hon'ble Supreme Court held that departmental testing must be supported by valid reasons and that importer's documents cannot be disregarded without cogent grounds. We find that in the present case no such defect in load port certificate or Customs laboratory report has been established by the Department.

9.10 We observe that it is well settled that the burden to establish eligibility to exemption lies upon the claimant. In the present case, the Appellant has discharged such burden through contemporaneous test reports which satisfy the prescribed parameters. We find that preferring a belated test report over contemporaneous reports without demonstrating reliability of the former is arbitrary.

9.11 In view of the above, the contemporaneous evidence clearly establishes that both MR and CSN conditions were satisfied at the time of import and that the belated CIMFR report cannot displace such evidence.

9.12 We accordingly hold that the coal imported under Bill of Entry No. 5919332 dated 06.02.2012 has

satisfied the conditions of exemption under Notification No. 21/2002-Cus as amended.

9.13 We find that interest is consequential and can arise only when duty is legally payable. Since we have held that the imported coke satisfied the conditions of the exemption notification and the differential duty demand is unsustainable, no duty becomes payable. In such circumstances, the demand of interest under Section 28AA also cannot survive and is liable to be set aside.

10. We find that for the reasons elaborately recorded above, the impugned order has travelled beyond the scope of the Show Cause Notice and that on merits the imported coal satisfied the exemption conditions.

11. We accordingly set aside Order-in-Original No. 01/2015 dated 10.09.2015 to the extent it denies exemption and confirms demand in respect of Bill of Entry No. 5919332 dated 06.02.2012 along with interest. The Appeal is allowed with consequential relief in accordance with law.

(Order pronounced in open court on 10.03.2026)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)