

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD**

Division Bench – Court No. – I

Customs Appeal No. 26820 of 2013

(Arising out of Order-in-Appeal No.03/2013-VCH dt.13.03.2013 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Visakhapatnam)

M/s Kalinga Commercial Corporation Ltd

C-112, HIG, Housing Board Colony, Baramunda,
Bhubaneswar, Odisha – 751 003

.....Appellant

VERSUS

Commissioner of Customs

Visakhapatnam - CUS

4th Floor, Customs House, Port Area,
Visakhapatnam, Andhra Pradesh – 530 035

.....Respondent

Appearance

Shri Kishore K. Acharya & Shri Narendra KV Dash, Advocates for the Appellant.

Shri A. Rangadham, AR for the Respondent.

**Coram: HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)**

FINAL ORDER No. A/30180/2026

Date of Hearing: 04.12.2025

Date of Decision: 02.04.2026

[Order per: A.K. JYOTISHI]

M/s Kalinga Commercial Corporation Ltd (hereinafter referred to as the appellant) are in appeal against the Order-in-Appeal dt.13.03.2013, whereby, the Commissioner (Appeals) has upheld the order passed by the original adjudicating authority.

2. The issue, in brief, is that the appellant had entered into an agreement with a buyer in China to supply Iron Ore fines of 62.50% fe content at a unit price of USD 136 PDMT FOB. This was in terms of agreement dt.02.08.2010. Since the price declared as well as various other parameters like moisture and fe content were provisional, the assessment of the shipping bills was kept provisional and subsequently, on submission of final commercial invoice, Bank Realization Certificate (BRC), Bill of Lading, Load Port Certificate, etc., the said shipping bills, both dt.07.10.2010, were finalized, whereby, the adjudicating authority ordered for a refund of Rs.2,95,549/-. While resorting to re-assessment, the original assessing authority has

considered the originally declared FOB value of USD 136 PDMT and also fe content of 62.5%, even though the customs house laboratory test report found the same to be 62.78%. Also took into account the actual moisture content as 7.19% as against declared 10%. He also found that there was 7.48% of lumps in the consignment and hence levied higher rate of duty @ 15% advalorem on 2.48% of consignment treating them as lumps after allowing 5% tolerance in terms of department's clarification dt.28.01.2011.

3. On adjudication, the Commissioner (Appeals) noted that there have been various amendments in contract and certain documents were not brought to the notice of the original assessing authority and therefore, the unilateral declaration of price as USD 111 PDMT is not correct. Moreover, he observed that the appellant has not brought on record any chemical analysis certificate of CIQ received from seller nor submitted such CIQ certificate to the respondent and held that reduction in unit price was done solely on the basis of a letter dt.18.10.2010 of the buyer without observing even the contractual condition as referred above. He also did not agree with the contention that higher rate of duty cannot be charged on certain consignments of Iron Ore fines as Iron Ore lumps.

4. Learned Advocate for the appellant has mainly contested that the assessing officer has not appreciated the fact that after the initial agreement, the contract itself underwent certain changes in terms of certain addendum in view of percentage of fe content of the consignment leading to reduction in per unit price.

5. Learned AR, on the other hand, has reiterated the findings of the Commissioner (Appeals).

6. Heard both sides and perused the records.

7. The issue to be decided is whether the appellants have received the refund in accordance with proper assessment of their shipping bills, which were initially assessed provisionally or otherwise. We find that in this case though the export had taken place in terms of a contract, wherein, certain terms and conditions were agreed upon, the said terms and conditions were further amended in view of purportedly lower percentage of fe content as against originally agreed percentage. This would have obviously resulted in re-negotiation of PDMT price as against price which was declared initially @

USD 136 PDMT. It is, however, nobody's case that the appellants have received any amount over and above the amount reflected in the BRC vis-à-vis the consignments covered by the said two shipping bills, which were initially assessed provisionally. We find that the assessing officer could not appreciate the modifications made in the original contract by way of an addendum in view of earlier agreement itself and therefore, has not considered the revised unit price based on actual moisture content, fe content, etc. He has also not appreciated that in a consignment containing certain portion of lumps, the entire consignment has to be considered as that of fines, if it is within certain limit and not necessarily as per Board's direction. We find that all these issues have been discussed and decided by this Bench in several orders having identical issues. In the case of Vibhutigudda Mines Vs CC [2025 (5) TMI 171 – CESTAT Hyd] and Bonai Industrial Co. Pvt Ltd, Rungta Mines, Feegrade & Co. Pvt Ltd & Others Vs CC, Visakhapatnam [Final Order No. A/30317-30324/2024 dt.21.06.2024],, all the issues referred to in this appeal have been discussed by this Bench in detail, which are equally applicable to the present appeal.

8. Therefore, the order of the Commissioner (Appeals) is set aside and the matter is remanded back to the Original Authority, who shall finalize the assessment keeping in view the judgments cited, supra, as also the original contract read with addendum made thereto and any other supporting documents which appellant may like to place before him and thereafter, sanction refund, if any, as per law.

9. Appeal allowed by way of remand.

(Pronounced in the Open Court on 02.04.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)