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ORISSA HIGH COURT : CUTTACK

W.P.(C) No.32424 of 2025

In the matter of an Application under Articles 226 & 227
of the Constitution of India, 1950

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OCL Iron and Steels Limited,
(Formerly S. M. Niryat Pvt. Ltd.),
having its registered office at Godrej
Waterside, Tower-I, 5th Floor, Block DP-5,
Sector-V, Kolkata, Bidhan Nagar,
CK Market, North 24 Parganas,
Salt Lake, West Bengal-700091,
represented through its
Director Dinesh Kumar Jaiswal,
Having address at 3rd Floor, 7/B,
Temple Street near Jyoti Cinema,
Princep Street, Kolkata – 700 072. ... Petitioner

-VERSUS-

1. Union of India,
through the Secretary,
Ministry of Finance,
Department of Revenue,
Government of India,
having its Office at North Block,
New Delhi – 110 001.
2. Commissioner of Customs (Preventive),
Bhubaneswar Commissionerate, Bhubaneswar,
Having office at 1st Floor,
Central Revenue Building,
Rajaswa Vihar, Bhubaneswar
Odisha – 751 007. ...Opposite parties.



Counsel appeared for the parties:

For the Petitioner : Mr. V. Sridharan,
Senior Advocate
Assisted by
M/s. Saswat Kumar Acharya,
Abhisek Agarwal, Sahil Pargh
and Abhijeet Agarwal, Advocates.

For the Opposite Party No.1 : Mr. Satyanarayan Pattanaik,
Central Government Counsel

For the Opposite Party No.2 : Mr. Sujan Kumar Roy Choudhury,
Senior Standing Counsel.

P R E S E N T:

**HONOURABLE CHIEF JUSTICE
MR. HARISH TANDON**

AND

**HONOURABLE JUSTICE
MR. MURAHARI SRI RAMAN**

Dates of Hearing : 09.03.2026 :: Date of Judgment : 27.04.2026

JUDGMENT

MURAHARI SRI RAMAN, J.—

Assailed in the writ petition is the Order-in-Original No.02/CC(P)/BBSR/CUS/Commissioner/2025, dated 24.09.2025 passed by the Commissioner of Customs (Preventive), Bhubaneswar-opposite party No.2 (Annexure-11) finally assessing the transactions of



export of iron ore fines under the Customs Act, 1962, in connection with the direction of this Court *vide* Order dated 11.07.2025 passed in W.P.(C) No.6323 of 2025. The petitioner, beseeching invocation of power under Articles 226 and 227 of the Constitution of India, prayed for grant of following relief(s):

“In view of the aforesaid facts and circumstances, it is humbly prayed that this Hon’ble Court may kindly be pleased to:

- A. *Admit the writ petition and issue appropriate writ(s) quashing the impugned Order-in-Original dated 24.09.2025 passed by the opposite party No.2 under Annexure-11, and all consequential penalty and other proceedings arising therefrom;*
- B. *Pass such other order (s) as may be deemed just and proper in the interest of justice;*

And for this act of kindness, the Petitioner as in duty bound shall ever pray.”

Facts:

2. Pertinent factual matrix leading to filing of the writ petition before this Court is narrated hereunder.
 - 2.1. The petitioner (formerly known as S.M. Niryat Pvt. Ltd., for short, “SMNPL”), is engaged in the business of export of iron ore fines through established maritime trade routes.



2.2. The former company, *i.e.*, SMNPL, had preferred W.P.(C) No.2834 of 2021 before this Court seeking directions upon the Deputy Commissioner, Paradip Customs Division, Odisha, for completion of final assessment of shipping bills relating to exports made during the period from 09.07.2018 to 13.10.2020 in accordance with Circular No.04/2012-Cus dated 17.02.2012, issued by Central Board of Excise and Customs (for short, “CBEC”) on Wet Metric Tonne (“WMT”, abbreviated) basis and in tune with the principles set forth in the judgments rendered by the Hon’ble Supreme Court of India and various other High Courts in this regard which have been consistently followed by the Custom, Excise and Service Tax Appellate Tribunal including the statutory authorities. This Court *vide* order dated 19.02.2021 directed as follows:

“5. *Considering the submissions made, it is directed that after furnishing the requisite documents, not later than 12th April 2021, the Opposite Party will give the Petitioner an opportunity of being heard and after taking into account the circulars, judgments and any other document that the Petitioner seeks to rely upon pass a reasoned order, not later than 3rd May, 2021. The said order will be communicated to the Petitioner, not later than 10th May, 2021. The date of hearing be intimated to the Petitioner at least one week in advance.*

6. *The writ petition is disposed of in the above terms.”*



2.3. Based on specific intelligence received from the Directorate of Revenue Intelligence, Kolkata Zone Unit alleging misdeclaration of iron ore fines (Fe content), exported from India, the petitioner was issued with Demand-*cum*-Show-Cause Notice, dated 18.12.2023 (“SCN”, for brevity) alleging liability of customs duty to the tune of Rs.256,95,38,408/- (approximately) along with applicable interest and penalty thereof. In response to thereto, written replies dated 21.10.2024 and 01.02.2025 *vide* Annexure-4 and Annexure-5 respectively were filed objecting that the calculation sought to be made by the Adjudicating Authority indicating Fe content of the exported iron ore fines would be more than 58% on dry metric tonne (abbreviation, “DMT”) basis as per norm prescribed by the Bureau of Indian Standards, *i.e.*, I.S.1493-1959 [IS1493-1 (1981)] reaffirmed in 2016, as such a course would not be in consonance with the Circular(s) issued by the CBEC and principles laid down by different Courts.

2.4. Flagging that the Commissioner of Customs (Preventive), Bhubaneswar Commissionerate proposed to redetermine the value of the shipping bills under Section 14 of the Customs Act, 1962 pertaining to exports of iron ore fines made during the period from 09.07.2018 to 02.04.2022 on DMT basis, the petitioner challenging the said SCN



invoked writ jurisdiction by way of an application under Article 226/227 of the Constitution of India, which was registered as W.P.(C) No.6323 of 2025 before this Court.

2.5. During pendency of said writ petition, the petitioner was issued with a personal hearing notice dated 10.07.2025 fixing the date of personal hearing on 28.07.2025.

2.6. This Court disposed of aforesaid W.P.(C) No.6323 of 2025 by order dated 11.07.2025, with the following observation:

“7. The Petitioner appears to have filed reply dated 1st February, 2025 (vide Annexure-8) in connection with Show Cause Notice dated 18th December, 2023 before the Commissioner of Customs (Preventive), Commissionerate at Bhubaneswar and the said authority till date has not proceeded to finalise the shipping bills.

8. It is true, as argued by Sri Tusar Kanti Satapathy, learned Senior Standing Counsel, that touching merit of the matter by laying guidelines to proceed with the determination of Fe contents of iron ore fines which were exported would affect adversely the final assessment which is required to be based on fact-finding based on evidence available on record by applying appropriate law to such facts. Nonetheless, it needs to be observed that the said authority, while finalizing the provisional assessment, shall have to take into account not only the material placed before him but also decide whether relevant decisions suggesting method of



determination of Fe contents of iron ore fines exported are applicable along with Circular No.04/2012-Cus., dated 17th February, 2012 issued by the Ministry of Finance, Department of Revenue, Central Board of Excise and Customs.

8.1. *It, therefore, needs to be emphasized without expressing any opinion touching the merit of the matter that the authority concerned shall proceed to complete the final assessment taking into consideration the reply as stated to have been submitted by the Petitioner vis-à-vis materials available on record.*

8.2. *For the said purpose, the Petitioner is, therefore, directed to appear before the concerned authority along with copy of this Order on or before 25th July, 2025. On the date of such appearance, the authority may proceed to finalise the provisional assessment forthwith or may adjourn the proceeding for a future date as he deems appropriate. However, after affording a reasonable opportunity of hearing, he shall conclude the proceeding. It is further directed that while petitioner-assessee shall not be granted unnecessary adjournments if date(s) is fixed beyond 25.07.2025, the authority concerned shall complete the entire process of finalization within a period of two months from the date of appearance of the Petitioner as stipulated above.*

9. *With the aforesaid observation and direction, the Writ Petition is disposed of. Pending Interlocutory Applications, if any, are disposed of accordingly.”*

2.7. The petitioner filed written note dated 21.07.2025 by persisting that the authority may finalise the subject



shipping bills keeping in view the applicable Circulars and Judgments in this regard.

- 2.8. The petitioner filed a detailed additional reply dated 25.08.2025, which was filed before the opposite party No.2-Commissioner of Customs (Preventive) on 28.07.2025 during the course of personal hearing.
- 2.9. The Order-in-Original dated 11.07.2025 and Corrigendum dated 14.10.2025 (Annexures-11 and 12 respectively) thereto have been passed by the opposite party No.2. Dissatisfied with the modalities adopted by the Commissioner of Customs (Preventive) in raising such demand by fixing liability towards duty on account of export of iron ore fines on DMT basis the present writ petition has been filed.

Hearing:

3. At the outset Sri Sujan Kumar Roy Choudhury, learned Senior Standing Counsel raised objection against entertainment of writ petition against the Order-in-Original citing *Union of India Vrs. T.R. Verma, (1958) 1 SCR 499*; *Radha Krishan Industries Vrs. State of Himachal Pradesh, (2021) 3 SCR 406* and *Rikhab Chand Jain Vrs. Union of India, (2025) 152 GSTR 809 (SC)* to urge that when an alternative and equally efficacious remedy is open for the litigant, he should be required to pursue that remedy and not to invoke the special



jurisdiction of the High Court and when such remedy exists, it will be a sound exercise of discretion to refuse to interfere in a petition under Article 226 of the Constitution of India unless there are good grounds therefor. Nevertheless, Sri V. Sridharan, learned Senior Advocate strongly opposing such a stance of the learned Senior Standing Counsel submitted that the methodology to be adopted for determination of Fe content with respect to transaction of export of iron ore fines as has been enunciated by the Courts having not been followed by the Adjudicating Authority, the recourse to avail remedy by way of invoking writ jurisdiction is not absolute bar. Taking into consideration the contents of the writ petition, nature of challenge and the tenor of adjudication, it is felt apt to entertain this writ petition for limited purpose to adjudicate whether the transactions in question are to be considered DMT basis. In such view of the matter, on the consent of the learned counsel for the respective parties, this matter is taken for final hearing.

- 3.1. Heard Sri V. Sridharan, learned Senior Advocate being assisted by Mr. Saswat Acharya, Mr. Abhisek Agarwal and Mr. Abhijeet Agarwal, Advocates and Sri Satyanarayan Pattanaik, learned Central Government Counsel appearing for opposite party No.1 and Sri Sujan



Kumar Roy Choudhury, learned Senior Standing Counsel appearing for opposite party No.2.

3.2. Hearing being concluded, the matter was reserved for preparation and pronouncement of Judgment.

Submissions of counsel for respective parties:

4. Sri V. Sridharan, learned Senior Advocate assisted by Mr. Saswat Kumar Acharya, learned Advocate would submit that the determination of value of the goods exported for the purpose of levy of customs duty being made by computing the Fe content on DMT basis and thereby refuting the benefit of exemption claimed by the petitioner is unconscionable and such action of the authority is only to drag the transactions of export effected by the petitioner into the net of taxation.

4.1. Explaining further it is narrated that there exists two distinct classifications for the purpose of such assessment: *viz.*, firstly, iron ore containing iron (Fe) content equal to or exceeding 58% is categorized as high-grade iron ore/fines, and secondly, iron ore/fines containing less than 58% of Fe content is categorized as low-grade iron ore. The CBEC *vide* Circular No. 04/2012-Cus dated 17.02.2012, has explicitly clarified that for the purpose of determining the Fe content of iron ore/fines, the same is required to be computed on WMT basis in order to maintain uniformity across all



Customs Houses. The activity of export of iron ore undertaken by the petitioner-company during the relevant period, as well as prior and subsequent thereto, were executed through various ports across India, *i.e.* Paradip Port, Gopalpur Port, Haldia Port and Visakhapatnam Port. Having all such exports being duly assessed by the respective customs authorities on the basis of WMT by adhering to the applicable CBEC Circular(s) and prevailing legal principles, the subject adjudication on the basis of DMT could not have been done so as to refuse legitimate claim of exemption inasmuch as Fe content of exported iron ore/fines did not exceed 58%. Such a course would result in classification of the goods so exported as high-grade iron ore, which is contrary to the well-established and legally recognized method of assessment, *i.e.*, WMT basis.

- 4.2. In furtherance to what is submitted, it is made explicit that the Commissioner of Customs (Preventive) could not have taken divergent view at different times by changing his opinion with respect to different shipping bills. It is highlighted by the petitioner that the said authority adopted the method of WMT with regard to the previous and post shipping bills to the instant shipping bill against which current SCN was issued. Despite the fact that the position of law remains the same and the transactions of export were prior to the statutory



amendment, the Commissioner of Customs could not take prevaricating stance to determine the value of the goods exported on DMT basis. This exercise of power by the authority concerned throwing the rule of law and consistency in approach to the winds cannot be above reproach.

4.3. Factually the petitioner sought to explain that:

- i.* the Commissioner of Customs has levelled an allegation that the petitioner is engaged in a deliberate practice of purchasing high grade iron ore fines from the mines and traders but it intentionally declared the same as low grade iron ore in the shipping bills and export documents submitted to customs to evade applicable customs duty and certificates from China's Entry-Exit Inspection and Quarantine ("CIQ", for brevity) confirmed Fe content of more than 58% in certain cases.
- ii.* As against such allegation, in response thereto, the petitioner would place that the declarations made by it in the shipping bills was based on the pre shipment inspection done by Therapeutics Chemical Research Corporation¹ ("TCRC") and

¹ Most commonly in India, TCRC refers to the Therapeutics Chemical Research Corporation (now known as TCRC Quality Controls LLP). It is a prominent third-party inspection and testing agency widely recognized by customs



National Accreditation Board for Testing and Calibration Laboratories² (“NABL”) accredited laboratory with international operations and creditability. Without taking into consideration the contemporaneous document the Commissioner, Customs having determined the Fe content of the iron ore fines being shipped outside India based on his own whims and fancies, the fact finding is not only perverse, but also infirm in law. Choosing to rely upon documents like China’s Entry-Exit Inspection and Quarantine in preference to his own view expressed while finalising other shipping bills for different period considering the report of the Central Revenues Control Laboratory would warrant interference in the impugned Order-in-Original.

- iii.* It is pointed out that the statement(s) recorded under Section 108 of the Customs Act ought not to have been relied upon for the simple reason that the same is untested in view of non-compliance of

authorities for certifying the quality and quantity of cargo. Webportal: <https://www.tcrpgroup.com/> describes TCRC as, “pioneers in the realm of Third-Party Inspection, we specialize in pre-shipment and shipment inspections, encompassing comprehensive quality assurance, cargo supervision, and meticulous analysis of various commodities crucial to both export and import sectors”.

² Webportal: <https://nabl-india.org/introduction> describes, National Accreditation Board for Testing and Calibration Laboratories (NABL) is an accreditation body, with its accreditation system established in accordance with ISO/IEC 17011. “Conformity Assessment– Requirements for Accreditation bodies accrediting conformity assessment bodies”.



prescribed manner provided in Section 138B. The material collected from the third parties from their electronic devices by the Customs Department could not be admitted or relied upon as evidence inasmuch as there is absence of certification in terms of Section 65B of the Evidence Act, 1872. In *Ankit Kapoor Vrs. Commissioner of Customs (Port), Kolkata, 2018 SCC OnLine Cal 7121* it has been laid down as:

*“An investigation is undertaken by an officer duly authorized in that behalf with regard to any infraction of Customs Act, 1962. It is in the course of such investigation, statements of witnesses are taken under Section 108 of the Customs Act, 1962. The investigating authority on the basis of materials available, including statements under Section 108 of the Customs Act, 1962, issues a show cause notice. The show cause notice is issued under Section 124 of the Customs Act, 1962 and is to be adjudicated upon by the persons delineated under Section 122 of the Customs Act, 1962. **In the adjudicating proceedings, the prosecution is entitled to refer to and rely upon evidence of natural persons. It is at that material point of time, that is, when evidence of natural persons is relied upon before the adjudicating authority that, the prosecution should produce the natural persons witnesses and offer cross-examination to the delinquent.** In the facts of the present case, it does not appear that, the prosecution had offered*



the petitioner herein an opportunity to cross-examine the witnesses produce on their behalf.”

In *Lakshman Lal Das Vrs. Chief Commissioner of Customs*, 2018 SCC OnLine Cal 17002 it is observed as follows:

*“In an adjudication proceeding which is adversarial in nature, a party adducing evidence through a natural person is required to allow cross-examination of such natural person, to the other side. In the present case apparently the prosecution was relying upon evidence adduced by natural persons in the proceeding. **The prosecution, therefore, ought to have allowed such persons to be cross-examined. The petitioner made a request to the adjudicating authority for an opportunity to cross-examine.** Such request was made by the written notes of defence. The adjudicating authority took such written request on record. However, it did not allow the petitioner to cross-examine the prosecution witness. **It did not deal with the request for cross-examination, in the impugned order. It is not necessary that, a party to a proceeding, specify the reason why it requires the cross-examination of the witness.** When, a contesting party in adversarial litigation adduced evidence through a natural person, it results in a corresponding right to the opposite party in such adversarial proceeding to cross-examine such natural person. **In absence of such cross-examination being allowed or facilitated the evidence given by such natural person has no evidentiary value and cannot***



relied upon. *The Adjudicating Authority not having considered the request for grant of cross-examination of the prosecution witness, the impugned order stands vitiated by breach of the principles of natural justice. The impugned order is quashed. This order will not prevent the adjudicating authority to proceed a fresh from the stage reached on April 25, 2018 or from such stage it deems appropriate. **It is expected that, the adjudicating authority will keep the request of the petitioner to cross-examine the witnesses noted in its written notes of defence, in accordance with law.***

- iv.* Continuing further it is stated that the Commissioner of Customs arrived at perverse conclusion based on the observations of the Directorate of Revenue Intelligence, Kolkata Zonal Unit without paying due attention to the replies of the petitioner and his own findings while finalizing the certain other transactions of export *qua* shipping bills presented by the instant petitioner.
- v.* Opposing the allegation of submission of forged documents and collusion with laboratories, agents and officials, it is submitted that such fact is absolutely baseless and unfounded. Blindly relying on the investigation report of the Directorate of Revenue Intelligence, Kolkata Zonal Unit without applying independent mind, the opposite party No.2 fell in grave error of law. The petitioner asserts



that no iota of evidence is forthcoming from the opposite parties to hint that the documents submitted at the time of export of goods were forged or the transit permits in Form-I were fake/forged. Thus, the documents said to be collected from the possession of third parties and the alleged data retrieved from their mobile phones and laptops, cannot be treated as sacrosanct and having evidentiary value for utilisation against the petitioner.

5. By way of written note of submission dated 05.12.2025, the opposite parties objected entertainment of writ petition by stating that “due process of investigation” was undertaken which culminated in passing of Order-in-Original. The petitioner having under-reported the Fe content to avail the benefit of exemption from payment of customs duty deliberately disclosed the iron ore fines to be of less than 58% Fe content. During the course of investigation the Directorate of Revenue Intelligence having taken care of export data, examination of procurement sources, forensic analysis of digital devices and statements recorded under Section 108 of the Customs Act, no infirmity could be imputed into the adjudication made *vide* Order-in-Original. It is, thus, submitted by the learned Senior Standing Counsel that the value of transactions could be correctly assessed



adhering to the provisions provided under Rule 3: “Determination of the method of valuation” and Rule 8: “Rejection of declared value” of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007.

5.1. The Adjudicating Authority having considered details of material available on record demonstrated that the petitioner committed fraud systematically by following a particular pattern. Discrepancies were noticed on analysis of Form E submitted by the petitioner whereby it could be ascertained that high grade iron ore fines were exported which have Fe content bearing more than 58%.

5.2. It is canvassed by Sri Sujan Kumar Roy Choudhury, learned Senior Standing Counsel that declaring low grade iron ore fines to hoodwink the Customs Authorities adopting dubious device by generating reports of certain laboratories the petitioner could manage to export the goods to outside the country without payment of customs duty. From the report of Directorate of Revenue Intelligence discrepancies in documents furnished by the petitioner could be noticed and the petitioner colluded with the laboratories, dummy firms, port authorities, port brokers and the exporter-company and manipulated quality certificates and documents. The Commissioner of Customs, Preventive while adjudicating the shipping bills in



question examined and correlated diverse pieces of evidence like statements, forensic reports, electronic data, permits, invoices, and quality test reports to form a coherent depiction of systematic fraud.

5.3. Expanding his argument further the learned Senior Standing Counsel put forth his submission that Circular No.04/2012, dated 17.02.2012 *ipso facto* cannot be made applicable in every circumstances. When the petitioner is seen to have perpetrated fraud on the authority and the overwhelming evidence available on record to depict that the recipient outside the country having confirmed to have received iron ore fines of more than 58% Fe content, the petitioner cannot be protected under the umbrella of such Circular. The Adjudicating Authority having proceeded on the basis of factual analysis of the material on record and applied the correct method to raise the demand by determining liability by levying duty on the exported goods on DMT basis, the petitioner cannot be allowed to circumvent alternative remedy provided under the statute for ventilation of grievance on facts as well as in law.

5.4. Sri Sujan Kumar Roy Choudhury, learned Senior Standing Counsel drew attention of this Court to Section 14³ of the Customs Act to suggest that it is imperative

³ Section 14 of the Customs Act, 1962 stands thus:
“14. Valuation of goods.—



on the part of the Customs Authorities to levy customs duty on the “transaction value”. As in the subject-transactions value furnished are incorrect, the value disclosed by the petitioner cannot be taken as the true

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- (1) *For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf:*

Provided that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf:

Provided further that the rules made in this behalf may provide for,—

- (i) *the circumstances in which the buyer and the seller shall be deemed to be related;*
- (ii) *the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;*
- (iii) *the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section:*

Provided also that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill of export, as the case may be, is presented under section 50.

- (2) *Notwithstanding anything contained in sub-section (1), if the Board is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.*

Explanation.—

For the purposes of this section—

- (a) *“rate of exchange” means the rate of exchange—*
 - (i) *determined by the Board, or*
 - (ii) *ascertained in such manner as the Board may direct, for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;*
- (b) *“foreign currency” and “Indian currency” have the meanings respectively assigned to them in clause (m) and clause (q) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999).”*



and correct figures. He vehemently contested the submissions of the learned Senior Counsel appearing for the petitioner to countenance the reasons contained in the Order-in-Original that applying WMT would legitimise false data relating to “transaction value”.

- 5.5. In furtherance to what is submitted hitherto, learned Senior Standing Counsel would suggest that customs duty being levied on the import or export of the goods into or from India, such levy is guided by the statutory provisions contained in the Customs Act, 1962 and the rate of duty applicable is derived from the Customs Tariff Act, 1975 coupled with notifications issued from time to time thereunder.
- 5.6. Having drawn support from the findings returned by the Commissioner of Customs (Preventive) in the Order-in-Original he forcefully urged that the petitioner is obligated to disclose true and correct figures of Fe contents of the iron ore fines exported by way of furnishing declaration in Form E and the transaction value. As it is inconceivable that the Fe content of the iron ore fines during export would change, the recipient having affirmed to have received the iron ore fines with Fe content at more than 58%, the declaration made by the petitioner has rightfully been held to be deliberately tampered with. It is asserted by the opposite parties that:



“The customs duty in the shipping bills covered under the instant SCN dated 18.12.2023 shall be assessed based on the truthful Fe content declaration as declared in Form E. Fe content of iron ore fines cannot decrease during transit. The exporter’s Form E declared high grade ore (>58% Fe), yet the shipping bills claimed lower Fe content (<58% Fe). Such a discrepancy is impossible without deliberate suppression, which makes the Circular’s WMT methodology irrelevant and inapplicable in this context.”

- 5.7. Therefore, it is argued that by misstating the Fe content lower than that it actually is, the exporter paid less or *nil* customs duty, which resulted in huge revenue loss.
6. On 09.03.2026 in course of hearing Sri V. Sridharan, learned Senior Advocate referring to written note of submissions of even date confined his submission to say that “the sole and entire foundation of the proceedings in the Show Cause Notice (SCN) is that the Fe content must be computed only on a Dry Metric Tonne (“DMT”) basis” and “it cannot be on Wet Metric Tonne (“WMT”) basis. Drawing attention of this Court to paragraphs 2.1, 4.1 to 4.6, 8.2, 8.3 and 17.5.3 to 17.5.7, it is submitted that each shipping bill under the heading “proper assessable quantity in dry basis” shows percentage of Fe content on dry basis and the annexures appended to SCN reveals that “description: re-determined according to outcome of investigation”. It is further contended that the SCN in the Annexures-A2, B2 and C2 forming part of Annexure-A indicates specific column titled “Assessable Fe % (on



dry basis)”. Therefore, he contended that the sole basis for demand of duty by the Commissioner of Customs is by adopting Fe content on DMT basis.

- 6.1. Laying emphasis on the Circular dated 17.02.2012 and decisions rendered by the Hon’ble Supreme Court of India, the Hon’ble High Courts and the learned Customs, Excise and Service Tax Appellate Tribunal, the learned Senior Advocate for the petitioner submitted that when the basis of calculation is erroneous and flawed with the assessment *vide* Order-in-Original cannot be held to be valid being vulnerable and bad for erroneous application of law.

Analysis and discussion:

7. Factually no dispute subsists as to the disclosure of transaction value and payment of customs duty on WMT basis at the time of export of iron ore fines. From the arguments advanced by the learned Senior Standing Counsel it is untrammelled that high grade iron ore fines having more than 58% Fe content being exported, the petitioner perpetrated fraud, which denudes its right to be assessed on the basis of WMT.
- 7.1. Paragraphs 17.5.3, 17.5.4 and 17.5.5 of the SCN indicate that the Commissioner of Customs got swayed away by the change in regime in adopting method of levy of duty by taking into account Fe content on DMT basis.



For benefit of understanding, said paragraphs are extracted and quoted hereunder:

“17.5.3. *The sale-purchase contracts entered into by the exporter with their overseas buyers, contain the clause, “The parties agree that for the purpose of this agreement, the pricing of iron ore fines shall be based on the Fe content on dry basis or DMT basis”. The instant exporter has also realised export proceeds on Dry basis for classification of export goods under the Customs Tariff, and consequent assessment and payment of export duty.*

17.5.4. *From the discussions above, it is clear that both the judgment of Hon'ble Supreme Court and Board's Circular No. 04 of 2012-Customs were issued from the perspective of assessment of duty at specific rate i.e. on weight basis means the determining factor was “total weight”. The order itself clearly specifies that this holds when “the duty is relatable to weight”. However, that regime of levying export duty at specific rate has changed, and once there is change in law, it is a settled legal proposition that a Judgment issued in respect of the earlier legal landscape no longer holds precedential or binding value. At present, the duty is on ad-valorem basis, and the determining factor is "Value", which in the instant case has been negotiated on DMT basis. Therefore, considering ratio laid down in the decision of Hon'ble Supreme Court, the fact that the contracts were clearly designated on DMT basis and specified that Fe% should be*



determined on dry basis, and that export proceeds have also been realized on dry basis, determination of Fe% for the purpose of tariff classification and calculation of export duty should also be on dry basis.

17.5.5. *At the outset, it may be observed that the Circular No.04 of 2012-Customs only talks about determining the Contents of Iron Ore' by way of deducting the weight of impurities including moisture to arrive at the Net Fe content in absolute terms and not any ratio terms. This was an important clarification inasmuch as duty at that point of time to which the judgment mentioned supra relates to, was calculated on the basis of weight, unlike today when the duty is determined on ad-valorem basis.*

The judgment therefore is not relevant to the facts and circumstances of the instant case inasmuch as duty today is no longer chargeable or relatable on weight basis.

SMNPL, vide their submissions in Court, are attempting to twist these facts and settled legal positions. Their submissions are not backed by logic, facts on record, or international trade practices.""

7.2. From the above narration culled out from the SCN it could be perceived that the Commissioner, Customs has proceeded on the foundation that the exporter realised the consideration on DMT basis, and therefore, he



undertook to assess the exported goods on the DMT basis.

7.3. At this juncture it may be relevant to take note of charging provision provided in the Customs Act, 1962, which reads as follows:

“Section 12.

Dutiable goods.—

- (1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, on goods imported into, or exported from, India.*
- (2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government.”*

7.4. Section 16 provides for “*Date for determination of rate of duty and tariff valuation of export goods*”, which reads thus:

“(1) The rate of duty and tariff valuation, if any, applicable to any export goods, shall be the rate and valuation in force,—

- (a) **in the case of goods entered for export under section 50, on the date on which the proper officer makes an order permitting***



clearance and loading of the goods for exportation under section 51;

(b) in the case of any other goods, on the date of payment of duty.

(2) The provisions of this section shall not apply to baggage and goods exported by post.”

7.5. Provisions of Section 50 and Section 51 of the Customs Act, 1962 are reproduced hereunder:

“Clearance of export goods

50. Entry of goods for exportation.—

(1) The exporter of any goods shall make entry thereof by presenting electronically on the customs automated system to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export in such form and manner as may be prescribed.

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically on the customs automated system, allow an entry to be presented in any other manner.

(2) The exporter of any goods, while presenting a shipping bill or bill of export, shall make and subscribe to a declaration as to the truth of its contents.



- (3) *The exporter who presents a shipping bill or bill of export under this section shall ensure the following, namely:—*
- (a) *the accuracy and completeness of the information given therein;*
 - (b) *the authenticity and validity of any document supporting it; and*
 - (c) *compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.*

51. *Clearance of goods for exportation.—*

- (1) *Where the proper officer is satisfied that any goods entered for export are not prohibited goods and the exporter has paid the duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance and loading of the goods for exportation:*

Provided that such order may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria:

Provided further that the Central Government may, by notification in the Official Gazette, permit certain class of exporters to make deferred payment of said duty or any charges in such manner as may be provided by rules.

- (2) *Where the exporter fails to pay the export duty, either in full or in part, under the proviso to sub-*



section (1) by such due date as may be specified by rules, he shall pay interest on said duty not paid or short-paid till the date of its payment at such rate, not below five per cent and not exceeding thirty-six per cent per annum, as may be fixed by the Central Government, by notification in the Official Gazette.”

7.6. Cursory glance at the above provisions, they clearly envisage that the taxable event is the export and/or delivery of goods for clearance. It is the taxable event which is determinative character for levy of customs duty. On the occurrence of export, taxable event is charged. Section 12 of the Customs Act declares that duties of customs shall be levied. In this context it means not merely chargeability but also quantification of the duty, that is the valuation of goods for the purpose of levy of duty, the rate at which the duty should be levied and also recovery of such duty. The expression “duties of customs shall be levied ... on goods ... exported from, India” occurring in Section 12 must be interpreted keeping in view when the goods became chargeable to duty and in terms of Section 16 the duty is chargeable on the taxable event that occurs on the dates with reference to which the goods are to be valued and the event with reference to which the rate at which the duty is to be levied and quantified. Goods referred to in Section 14 are goods on which duty of customs is chargeable by reference to their value. It would be clear that Section 14 by itself does not lay down when or what



goods are chargeable to customs duty. It only deals with valuation of the goods exported which are chargeable to customs duty. If they are chargeable to duty and are chargeable by reference to their value, then the value has to be determined as laid down in Section 14. Whether the goods exported are chargeable to duty and if so, the point at which they become chargeable must be determined with reference to the provisions envisaged under Section 12 of the Customs Act.

- 7.7. It is trite that under all taxing statutes to consider levy of tax/duty it is to be determined when exactly did the taxable event occur? It is with reference to that point of time, that the chargeability or leviability of the tax or duty, as the case may be, has to be determined. That is the crucial date. See, *Apar Private Ltd. Vrs. Union of India*, 1985 (22) ELT 644 (Bom). In *Associated Forest Products (P) Ltd. Vrs. Assistant Collector of Customs*, (1992) 59 ELT 264 (Cal) it has been succinctly said that what is postponed is quantification and collection and not chargeability. While the taxable event is the crossing of territorial waters, the rate of duty applicable is determined based on Section 16. The provisions of Section 16 read with Sections 50 and 51 make it abundantly clear that the proper officer is required to make an order permitting clearance and loading of the goods for exportation upon being satisfied that any



goods entered for export are not prohibited goods and the exporter has paid the duty assessed thereon. Since on the date of export, there is no dispute that, the goods being found to be less than 58% Fe content were allowed to be exported on the WMT basis, the Commissioner of Customs could not have applied the amended provision by assessing the goods exported to be more than 58% Fe content on DMT.

8. It is vociferously argued that as if the method of computation of duty on assessment of weight of iron ore based on DMT, as amended by virtue of the Finance Act, 2022, is attracted to the transactions of export effected prior to such amendment, the Commissioner of Customs has proceeded to determine the liability. It is observed at paragraph 4.33.6 of the Order-in-Original as follows:

“For instance, they reported high grade ore in Form E to the mining authorities, yet declared same ore as low grade in shipping bills (based on wet basis). This discrepancy suggests an intentional attempt to conceal the true nature of the goods exported by them. Only after the conclusion of the investigation and issuance of SCN dated 18.12.2023 M/s. SMNPL claimed that Circular 04/2012 dated 17.02.2012 allows for WMT assessment. However, before the SCN, they never challenged the DMT-based testing conducted by TCRC or Minerals Lab, nor did they object to contracts specifying dry-basis pricing. They also accepted provisional assessments based on dry-basis values. This inconsistency indicates that their



current claims are an afterthought designed to justify their earlier misconduct.”

8.1. Sri V. Sridharan, learned Senior Advocate appearing for the petitioner placing reliance on *Commissioner of Customs (Preventive) Vrs. Essel Mining and Industries Ltd., 2026 SCC OnLine Ori 145* submitted that the perception of the Commissioner of Customs is inconsistent, incoherent and without logical basis inasmuch as this Court having taken cognizance of amendment held that *“Prior to amendment with effect from 01.05.2022 in the Customs Tariff Act, 1975 in pursuance of the Finance Act, 2022, the calculation was to be made based on WMT”*. The understanding of the Commissioner of Customs that the computation regime suffered amendment at the time of assessment is without comprehension. This Court in the *Essel Mining and Industries (supra)* held as follows:

“8.4. The Hon’ble Supreme Court of India in the context of applicability of law to the facts or the events during which transactions occurred laid down in Commissioner of Income Tax Vrs. Essar Teleholdings Ltd., (2018) 1 SCR 502 as follows:

‘The Constitution Bench in Commissioner of Income Tax (Central-1 New Delhi) Vrs. Vatika Township Pvt. Ltd., (2015) 1 SCC 1 = (2014) 367 ITR 466, after noticing the principle of Statutory Interpretation, as noted above, has laid down the following in para 36, 37 and 39:



‘36. In CIT Vrs. Scindia Steam Navigation Co. Ltd., (1961) 42 ITR 589 = 1961 SCC OnLine SC 118 = AIR 1961 SC 1633, this Court held that as the liability to pay tax is computed according to the law in force at the beginning of the assessment year i.e. the first day of April, any change in law affecting tax liability after that date though made during the currency of the assessment year, unless specifically made retrospective, does not apply to the assessment for that year.’

****’*

8.5. In Reliance Industries Ltd. Vrs. Commissioner of Sales Tax, Cuttack, (2020) 77 GSTR 225 (Ori) = 2019 SCC OnLine Ori 515 = AIR 2020 Ori 55 the principle has been enunciated with the following opinion:

‘10. But in our considered opinion, in a tax statute, the word “substitute” is to be interpreted strictly as per the legislative intention. It cannot be given the retrospective effect unless expressly provided or intention to that effect is manifest from a bare reading of the provision. If an ordinary interpretation is made as per the case law relied by the petitioner, then if any tax is increased, it cannot be realised retrospectively, which can never be the intention of such “substitution”. Therefore, amending provision will have prospective effect.

11. In that view of the matter, every word in a tax statute should be interpreted strictly as it stood on the date the taxing event exists or it occurs.



Thus, the argument canvassed by the learned counsel for the petitioner is devoid of any merit, is required to be rejected and is rejected.'

8.6. *Thus, determination of iron content of the goods exported as reflected in the Shipping Bills is to be governed by the legal position as emanating from Gangadhar Narsingdas Agrawal (supra)⁴, whereby it can be deduced that whenever any samples are tested, it has to be in the condition to which the goods are exported, i.e., in gross weight which included the moisture and other impurities."*

8.2. Since both the counsel appearing for the respective parties are at *consensus ad idem* that the shipping bills, subject matter of assessment in the present case are of prior to amendment of the Customs Tariff Act, 1975 by virtue of the Finance Act, 2022. Therefore, in the considered view of this Court as the taxable event with respect to exported goods in question occurred prior to amendment by virtue of the Finance Act, 2022 changing the modality of computation of weight of iron ore fines from WMT to DMT, the adjudication suffered set back inasmuch as the calculation of Fe content of iron ore fines as exported should have been made on the basis of WMT. This view is fortified by the following observations made in *Essel Mining and Industries (supra)*:

⁴ *Union of India Vrs. Gangadhar Narsingdas Agrawal, 1986 SCC OnLine Bom 506 = (1988) 33 ELT 673 (Bom)* has been affirmed in *Union of India Vrs. Gangadhar Narsingdas Aggarwal, (1997) 10 SCC 305 = (1997) 68 ECR 529 = (1997) 89 ELT 19 (SC).*



“8.2. On analysis of evidence on record, the view of the Appellate Authority found favour with the CESTAT, being fortified by consistent view expressed by it in very many cases. The percentage of Fe content of the Iron Ore Fines exported was as per report of SKM, which examined the sample on WMT basis. For addressing the aforesaid issue(s) relevant cases decided have been followed by the CESTAT. It observed that prior to the amendment of the Customs Tariff Act, 1975, by virtue of the Finance Act, 2022 with effect from 01.05.2022, the goods exported were to be assessed on the basis of WMT. Such an opinion is supported by the principles laid down in the case of Union of India Vrs. Gangadhar Narsingdas Agrawal, 1986 SCC OnLine Bom 506 : (1988) 33 ELT 673 (Bom). It is observed in the said case as follows:

‘2. It is common ground that the Iron ore fines as well as Lumpy Iron Ore exported by the petitioners was in a moist condition at the time when it was exported, namely, put on board the vessels concerned for being exported. The petitioners paid the export duty on the Iron ore fines exported by them on the footing of the iron ore content thereof being over 62 per cent which was the percentage of iron ore content as determined by Italab (Goa) Pvt. Ltd. on analysis of samples drawn at the time of the different shipments concerned. As far as lumpy iron ore exported by the petitioners was concerned, the petitioners paid export duty thereon on the footing of the iron ore content thereof being over 60 per cent as set out in the certificates issued by Italab (Goa) Pvt. Ltd. from



*analysis of samples drawn from various shipments concerned. These certificates certify that the aforesaid iron ore contents were determined on the basis of the analysis of the sample goods dried at a temperature of 105 Degree C. Thereafter the petitioners asked Italab (Goa) Pvt. Ltd. For certificates as regards iron contents of the said samples on the basis of the said lumpy iron ore and iron ore fines being in moist condition which was the actual condition in which these goods were exported. Certificates were duly issued by Italab (Goa) Pvt. Ltd. which stated that the iron content in the said lumpy iron ores and iron ore fines exported in a moist condition was about 57 per cent. Each of the certificates states precisely what were the iron ore contents in the iron ore fines and lumpy iron ores exported but generally speaking, these certificates indicated that the iron ore content was about 57 per cent. In these circumstances, the petitioners made refund applications claiming that they had erroneously paid duty at a higher rate on the footing of the iron ore content of these goods being higher than was actually present in the goods exported by them in the natural condition or the moist condition in which they were exported.****

3. *Before going into the contentions of Mr. Rage, learned Counsel for the appellants, it must be noticed that there is no dispute that the lumpy iron ore and iron ore fines exported by the petitioners was in a moist condition at the time when it was exported. Thus, what the*



petitioners exported was moist lumpy iron ore and moist iron ore fines. It is also undisputed that the rate of customs duty has to be calculated on the basis of the goods being in such condition as they were in at the time of export. Thus, it is an undisputed position that the claim for partial exemption from customs duty made by the petitioners in the present case has to be determined on the footing of the goods exported being moist iron ore fines and moist lumpy iron ores.

4. *Now, the only submission urged by Mr. Rege, learned Counsel for the appellants was that it is not possible by a physical analysis to determine the iron ore contents in moist lumpy iron ore or moist iron ore fines, because such moist iron ore fines and moist lumpy iron ore has to be dried for finding out the iron contents. It was urged by him that this is only method of analysis accepted by the Indian Standard Institute, and hence the result of that analysis must be made applicable directly or straightway to determine the percentage of iron contents in the iron ore exported by the petitioners. In our view, the submission has no merit whatever. Although it is true, as submitted by Mr. Rege, that moist lumpy iron ore and moist iron ore fines have to be dried for the purpose of determining the iron contents, there is a mathematical formula by which, on the basis of the results of these aforementioned analysis, the iron content in moist lumpy iron ore and moist iron ore fines can be easily determined. That formula has been in fact*



explained in a letter dated 23rd June 1978 addressed by Toman Trading Co. Ltd., a copy of which is at Exh. 'A' to the petition. It appears that following this very method, Italab (Goa) Pvt. Ltd. have issued certificates as to the iron content in the moist iron ore fines and moist lumpy iron ores exported by the petitioners, and these certificates show that the iron content in these iron ores was to the extent of about 57 per cent. Merely because in respect of moist iron ore the iron content cannot be determined directly by physical analysis this cannot lead to the result that the iron ore content cannot be determined at all or that the petitioners should be deprived of their just claim on that footing which is totally unwarranted by law. The submission of Mr. Rege must, therefore, fail.'

8.3. *Aforesaid view of the Bombay High Court was affirmed in Union of India Vrs. Gangadhar Narsingdas Aggarwal, (1997) 10 SCC 305 = (1997) 68 ECR 529 = (1997) 89 ELT 19 (SC), wherein it has been held that:*

'3. By Notification No. GSR 1152, dated 24th July, 1967 issued under Section 25(1) of the Customs Act, the Government exempted iron ore fines falling under Item 29 of the Second Schedule to the Tariff Act when exported out of India from so much of the duty leviable thereon as is in excess of Rs. 3/- per metric ton, where the iron content in the iron ore fines was below 62% and where it exceeds 62% so much of the duty as is in excess of Rs. 4/- per metric ton.



By another Notification dated 31st August, 1968 the Government exempted lumpy iron ore falling under Item 28 of the Second Schedule to the Tariff Act when exported out of India from so much of the duty as was in excess of the duty shown in Column (iii) depending on the iron content in the iron ore. It may here be mentioned that the duty had to be determined on the basis of weight of the commodity at the relevant point of time. It may here be mentioned that the duty had to be determined on the basis of weight of the commodity at the relevant point of time. In the case of lumpy iron ore where the percentage of iron was 60% or more but less than 63% the duty was restricted to Rs. 6/- per metric ton, where it was 58% or more but less than 60% it was restricted to Rs. 5/- per metric ton and where it was less than 58% it was restricted to Rs. 4/- per metric ton. It will thus be seen that under both the Notifications referred to above the duty was relatable to weight depending on the iron content in the ore or the ore fines. The question which was posed before the High Court was whether the percentage of iron content had to be determined after ignoring moisture in the lump or the percentage had to be determined taking all the impurities including moisture into account. The Revenue opted for the first method whereas the assessee contended that the percentage had to be determined taking all the impurities including moisture into account. The learned Single Judge in the High Court ruled in favour of the assessee and the Division



Bench agreed with the view taken by the learned Single Judge and hence these appeals.

4. *Mr. Bajpayee, the learned Counsel for the Revenue, strongly contended that the method of determining the iron content in the iron ore and the iron fines is to first eliminate the moisture and then the other impurities and ascertain the content of iron and determine its percentage without taking the moisture into consideration. This, he submitted, was the method which is normally employed under the ISI standard as well as by Chemical Analysts who are called upon to determine iron content in lumpy iron ore or iron ore fines. It is immaterial what method one adopts for the purposes of separating the iron content from the lumpy iron ore but the percentage has to be determined from the total weight which was available at the given point of time after the iron content is determined. That is because the duty is relatable to weight and, therefore, once the iron content is determined keeping in mind the total weight the percentage can be determined separating the iron content from the rest of the impurities inclusive of moisture and thereafter ascertain in which category the lumpy iron ore would fall for the purposes of charging duty under the aforesaid Notifications. This view which the learned Single Judge took and which came to be affirmed by the Division Bench of the High Court appears to us to be the correct view to take, for the reason that if the percentage of iron content is determined after ignoring the*



*moisture the percentage would not be relatable to the lumpy iron ore weighed at the relevant point of time for the purposes of charging duty. We, therefore, do not think that the High Court committed any mistake in the view it took. Even if two views were possible the view taken by the High Court being a plausible one would not call for intervention by this Court.’ ***”*

8.3. To show *bona fide* the petitioner in the written notes of submission dated 09.03.2026 (copy of which was handed over to the learned Senior Standing Counsel) brought out that details of all the shipping bills in question pertaining to goods sent *via* Paradip Port, Gopalpur Port, Dhamra Port, Haldia Port and Vizag Port, as reflected at Annexures-A1, A2, B1, B2, C1 and C2 appended to Annexure-A forming part of SCN are worksheets of the Customs Department. Said annexures contain bill of lading quantity in WMT with proper assessable value in DMT. The petitioner declared percentage of Fe content at 58% and the petitioner paid duty under protest before export of the goods. Reliance is placed on Customs House Laboratory Letter dated 11.09.2023 to demonstrate conversion mechanism for deriving Fe content of WMT basis from Fe content on DMT basis and *vice versa*. Said Letter contains the following:

“The iron ore fines/some varieties of iron ores are hygroscopic in nature. The conversion of Fe content from



Dry Basis (DMT) to as received basis (WMT) can be calculated in two different ways.

Following test parameters are extracted from attached report pertaining to S/B No.8273934/Dt.28.08.2017, for the illustration of model calculation.

1. Available total moisture content on record : 6.1%
2. Available total iron content on record (Dry Basis) : 53.1%

Way-1 : (Mathematical Calculation as mentioned in your letter)

Formula-

*Fe content as per WMT =
%Fe content per DMT (dry basis) * (100-M)/ 100*

(where M is % Moisture)

*Fe content =
53.1 * (100-6.1)/ 100=49.86%*

(as received basis, commonly known as WMT)

Way-2 : (Ref, Indian Standard 1493:1981 Part-1)

Step-A - Calculation of Factor K

K = 100/ 100-A

(A is moisture determined in test)

K = 100/(100-6.1)

K = 1.06496



Step-B (Calculation of Moisture on as received basis fro DMT)

$$\begin{aligned} \text{Fe on as received basis (WMT)} &= \\ \text{Available \% Fe content} & \\ \text{on record/K} &= 53.1/1.06496 \\ &= 49.86\% \end{aligned}$$

On the basis of above two ways, one can convert Fe content available on dry basis (DMT) to Fe content on as received basis (WMT).”

8.4. It may be worthwhile to refer to provisions of Section 39 and Section 40, which read thus:

“39. Export goods not to be loaded on vessel until entry-outwards granted.—

The master of a vessel shall not permit the loading of any export goods, other than baggage and mail bags, until an order has been given by the proper officer granting entry-outwards to such vessel.

40. Export goods not to be loaded unless duly passed by proper officer.—

The person-in-charge of a conveyance shall not permit the loading at a customs station—

(a) of export goods, other than baggage and mail bags, unless a shipping bill or bill of export or a bill of transshipment, as the case may be, duly passed by the proper officer, has been handed over to him by the exporter;

(b) of baggage and mail bags, unless their export has been duly permitted by the proper officer.”



8.5. Conjoint reading of Section 16, Section 39, Section 40, Section 50 and Section 51 lead to conceive that loading of goods for the purpose of export is not permissible unless the proper officer is satisfied. The determination of value prior to loading is an imperative requirement and modality is prescribed in the Circular 04/2012-Customs, dated 17.02.2012.

8.6. Circular dated 17.02.2012 reveals that:

*“Circular No. 04/2012-Cus
F. No. 450/93/2011-Cus.IV
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
Customs-IV Section*

New Delhi, 17th February, 2012

To

*All Chief Commissioners of Customs,
All Chief Commissioners of Central Excise,
All Director Generals/
Chief Departmental Representatives (CESTAT),
All Commissioners of Customs,
All Commissioners of Central Excise and
All Commissioners of Central Excise & Customs*

Sir/Madam,



Subject: Adoption of uniform Customs Procedure for calculating the contents of Iron Ore – clarification— regarding.

Several references have been received in the Board highlighting divergent practices for calculation of iron contents from Iron Ore being followed at different Ports for charging Export duty. In this regard two types of calculation methods are being followed i.e. on the basis of Wet Metric Ton (WMT) and other on the basis of Dry Metric Ton (DMT).

- 2. Hon'ble Supreme Court in the matter of Civil Appeal No.7539 of 1995 in case of Union of India Vrs Gangadhar Narsingdas Aggarwal, 1997 (89) ELT 19 (SC) in order to arrive at the Iron (Fe) contents out of Iron Ore, had held that:*

*'that is because the duty is relatable to weight and therefore, once the iron content is determined keeping in mind the total weight, the percentage can be determined separating the iron contents from the rest of the impurities inclusive of moisture and thereafter ascertain in which category the lumpy iron would fall for the purpose of charging duty***'*

- 3. In light of the observation by the Apex Court that export duty is chargeable according to Fe contents, and to maintain uniformity all over the custom houses, it is clarified that for the purpose of charging of export duty the assessment of Iron ore for determination of Fe contents shall be made on Wet Metric Ton (WMT) basis which in other words mean deducting the weight of impurities (inclusive of*



moisture) out of the total weight/Gross Weight to arrive at Net Fe contents.

- 4. In case of any difficulty in arriving at the net Fe content, assessment may be based on test result which directly determines the Fe contents.*
- 5. Pending assessments on the issue, if any, should be finalized accordingly.*
- 6. Difficulties, if any, faced in the implementation of this circular, may be immediately brought to the notice of the Board.*

Yours faithfully,

(A.K.Goel)

Senior Technical Officer

Tariff Unit”

8.7. It is evident from said circular that the assessments are to be finalised on the basis of manner stated in the Circular issued based on the decision rendered by the Hon'ble Supreme Court of India. It emanates therefrom that the export duty is chargeable according to Fe contents, and for the purpose of charging of export duty the assessment of iron ore for determination of Fe contents shall be made on WMT basis which in other words means deducting the weight of impurities (inclusive of moisture) out of the total weight/Gross Weight to arrive at Net Fe contents. In case of difficulty, assessment can be based on test result which directly determines the Fe contents. The reason ascribed by the



learned Senior Standing Counsel that when fraud is alleged, the methodology specified in such Circular cannot be adhered to has no substance.

8.8. In *J.K. Lakshmi Cement Ltd. Vrs. CTO*, (2016) 16 SCC 213 = (2018) 53 GSTR 305 (SC) legal sanctity regarding circular has been stated thus:

“31. *Circulars issued under tax enactments can tone down the rigour of law, for an authority which wields power for its own advantage is given right to forego advantage when required and considered necessary. This power to issue circulars is for just, proper and efficient management of the work and in public interest. It is a beneficial power for proper administration of fiscal law, so that undue hardship may not be caused. Circulars are binding on the authorities administering the enactment but cannot alter the provision of the enactment, etc. to the detriment of the assessee. Needless to emphasise that a circular should not be adverse and cause prejudice to the assessee. (See UCO Bank Vrs. CIT, (1999) 4 SCC 599.)*

32. In *CCE Vrs. Ratan Melting and Wire Industries*, (2008) 13 SCC 1, it has been held that circulars and instructions issued by the Board are binding on the authorities under the respective statute, but when this Court or the High Court lays down a principle, it would be appropriate for the Court to direct that the circular should not be given effect to, for the circulars are not binding on the Court. In the case at hand, once Circular dated 15.04.1994 stands withdrawn vide Circular dated 16.04.2001, the appellant



assessee cannot claim the benefit of the withdrawn circular.

34. *In this context, we may note another contention that has been advanced before us. It is based upon the doctrine of contemporanea expositio. In our considered opinion, the said doctrine would not be applicable and cannot be pressed into service. **Usage or practice developed under a statute is indicative of the meaning prescribed to its words by contemporary opinion.** In case of an ancient statute, doctrine of contemporanea expositio is applied as an admissible aid to its construction. The doctrine is based upon the precept that the words used in a statutory provision must be understood in the same way in which they are usually understood in ordinary common parlance by the people in the area and business. (See G.P. Singh's Principles of Statutory Interpretation, 13th Edn. 2012 at p. 344.)"*

8.9. The circulars issued in exercise of statutory powers are binding on the Department, but it would be binding so long as the Circulars are in operation and it holds the field. [Reference can be had to: *UCO Bank Vrs. CIT*, (1999) 237 ITR 889 (SC); *Steel Authority of India Vrs. Collector of Customs, Bombay*, (2000) 115 ELT 42; *Paper Products Ltd. Vrs. Commissioner of Central Excise*, (2001) 247 ITR 128 (SC); *Collector of Central Excise Vrs. Dhiren Chemical Industries*, (2002) 126 STC 122 (SC) = (2002) 254 ITR 554 (SC); *Union of India Vrs. Azadi Bachao*



Andolan, (2003) 263 ITR 706 (SC) = (2003) 1 RC 742 (SC); Balaji Computers Vrs. State of Karnataka, (2006) 147 STC 269 (Kar); Union of India Vrs. Arviva Industries (I) Ltd. Vrs. (2007) 209 ELT 5 (SC); State of Kerala Vrs. Kurian Abraham Pvt. Ltd., (2008) 13 VST 1 (SC).]

8.10. In *Paper Products Ltd. Vrs. CCE, (1999) 7 SCC 84* it has been laid down that:

“4. *The question for our consideration in these appeals is: what is the true nature and effect of the circulars issued by the Board in exercise of its power under Section 37-B of the Central Excise Act, 1944? This question is no more res integra in view of the various judgments of this Court. This Court in a catena of decisions has held that the circulars issued under Section 37-B of the said Act are binding on the Department and the Department cannot be permitted to take a stand contrary to the instructions issued by the Board. These judgments have also held that the position may be different with regard to an assessee who can contest the validity or legality of such instructions but so far as the Department is concerned, such right is not available. (See CCE Vrs. Usha Martin Industries, (1997) 7 SCC 47). In the case of Ranadey Micronutrients Vrs. CCE, (1996) 10 SCC 387 this Court held that **the whole objective of such circulars is to adopt a uniform practice and to inform the trade as to how a particular product will be treated for the purposes of excise duty. The Court also held that it does not lie in the mouth of the Revenue to repudiate a circular issued by the Board on the***



basis that it is inconsistent with a statutory provision. Consistency and discipline are, according to this Court, of far greater importance than the winning or losing of court proceedings. In the case of *CCE Vrs. Jayant Dalal (P) Ltd.*, (1997) 10 SCC 402 this Court has held that it is not open to the Revenue to advance an argument or even file an appeal against the correctness of the binding nature of the circulars issued by the Board. Similar is the view taken by this Court in the case of *CCE Vrs. Kores (India) Ltd.*, (1997) 10 SCC 338.

5. It is clear from the abovesaid pronouncements of this Court that apart from the fact that **the circulars issued by the Board are binding on the Department, the Department is precluded from challenging the correctness of the said circulars even on the ground of the same being inconsistent with the statutory provision.** The ratio of the judgment of this Court further precludes the right of the Department to file an appeal against the correctness of the binding nature of the circulars. Therefore, it is clear that so far as the Department is concerned, whatever action it has to take, the same will have to be consistent with the circular which is in force at the relevant point of time.”

8.11. It is pertinent to have regard to the observations made in *Varsha Plastics (P) Ltd. Vrs. Union of India*, (2009) 3 SCC 365 = (2010) 2 GSTR 343 (SC)

- “16. Section 151-A empowers the Board to issue orders, instructions and directions to officers of Customs for the purpose of uniformity in the classification of



goods or with respect to levy of duty thereon. The said provision is as follows:

‘151-A. Instructions to officers of Customs.—

The Board may, if it considers it necessary or expedient so to do for the purpose of uniformity in the classification of goods or with respect to the levy of duty thereon, issue such orders, instructions and directions to officers of customs as it may deem fit and such officers of customs and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board:

Provided that no such orders, instructions or directions shall be issued—

- (a) so as to require any such officer of Customs to make a particular assessment or to dispose of a particular case in a particular manner; or*
- (b) so as to interfere with the discretion of the Commissioner of Customs (Appeals) in the exercise of his appellate functions.’*

22. Rejection of the transaction value of goods by the Customs Authority being totally an unrealistic value, has been found to be proper by this Court in Collector of Customs Vrs. Shibani Engg. Systems, (1996) 10 SCC 42.



26. *Rabindra Chandra Paul, (2007) 3 SCC 93 and South India Television (P) Ltd., (2007) 6 SCC 373 also recognise the legal position that transaction value can be rejected if invoice price is not found to be correct, but it is for the Department to prove that the invoice price is incorrect.*

27. *Rule 11 of the Customs Valuation Rules also provides that in case of dispute between importer and the officer of the Customs valuing the goods it shall be resolved consistent with the provisions contained in sub-section (1) of Section 14 of the Act.*

28. *It has to be kept in mind that once the nature of goods has been misdeclared, the value declared on the imported goods becomes unacceptable. It does not in any way affect the legal position that the burden is on the Customs Authorities to establish the case of misdeclaration of goods or valuation or that the declared price did not reflect the true transaction value.*

29. *Section 151-A of the Act confers upon the Board the power to issue orders, instructions and directions to the authorities for proper administration of the provisions of the Act. **It also provides that all such authorities and all other persons employed in the execution of the provisions of the Act shall observe and follow such orders, instructions and directions of the Board.** The proviso appended thereto states that no such orders, instructions or directions shall be issued—*



- (a) *so as to require all such officers of Customs to make a particular assessment or to dispose of a particular case in a particular manner or;*
- (b) *so as to interfere with the discretion of the Collector of Customs (Appeals) in exercise of his appellate functions.*

30. *The proviso to Section 151-A makes it abundantly clear that the Customs Officer who has to make a particular assessment is not bound by such orders or instructions or directions of the Board. An assessing authority under the Act being a quasi-judicial authority has to act independently in exercise of his quasi-judicial powers and functions. Section 151-A does not in any manner control or affect the independent exercise of quasi-judicial functions by the assessing authority.*

34. *According to the Department, the impugned Standing Order was issued for the smooth functioning of assessment and examination work and to bring about uniformity in the work and it prescribes only the pattern of assessment and in no way interferes with the discretion of the assessment authority. In view of the categorical stand of the Department that the impugned Standing Order is just in the nature of guidelines and it does not in any way interfere with the discretion of officers, the impugned Standing Order has to be read and understood accordingly.*

37. *The availability of evidence of contemporaneous import of the same goods obviously provides the best*



guide for determination of value of the imported goods but in the absence of evidence of contemporaneous import, reference to foreign journals for finding out the correct international price of imported goods may not be irrelevant because ultimately the assessing authority has to determine the value of the imported goods at which such goods are sold or offered for sale in the course of international trade at the time of importation.”

8.12. This Court in *Commissioner of Customs (Preventive), Bhubaneswar Vrs. Chamong Tee Exports Private Limited*, 2025 SCC OnLine Ori 2932 = 2025 (III) ILR-CUT 1 held as follows:

“12. From the above quoted observations of the coordinate bench, it is exposit that the Fe content in IOF is to be determined on the basis of WMT and not DMT and in view of a decision having taken in this regard and in absence of any materials forthcoming before us to take a different view, the said point having settled cannot be said to be a debatable one nor it invites any different opinion to be arrived at. The comity of the judicial discipline demands the uniformity in a proposition of law and the judgment of the coordinate Bench of a Court binds the other coordinate Bench. The only course opens to the later coordinate Bench, in the event of dissent to refer the matter to the Chief Justice to constitute a larger Bench.

13. As indicated above, we do not find any material forthcoming to take a different view and, therefore, the judicial discipline demands the adherence of the



*judgment rendered by the coordinate Bench at an earlier point of time. **We thus do not find that the contention of the appellant that Fe content in IOF is to require to be determined on the basis of DMT and not WMT is sustainable.***”

14. *We further find that the appellant has taken a different stand in the instant appeal what he took before the Tribunal. A party cannot be permitted to take inconsistent stand at different stages of the proceeding. The plea taken before the Tribunal is sought to be varicated at the stage of the instant appeal, which in our opinion is not permissible. The enlightening observations rendered in the case of Dwijendra Narayan Roy Vrs. Joges Chandra De, 1923 SCC OnLine Cal 214 = AIR 1924 Cal 600 can be gainfully applied in this regard, wherein it is held:*

*‘*** It is an elementary rule that a party litigant cannot be permitted to assume inconsistent positions in Court, to play fast and loose, to blow hot and cold, to approbate and reprobate to the detriment of his opponent.: Bhaja Choudhury Vrs. Chuni Lal, 1906 SCC OnLine Cal 194 : (1906-07) 11 CWN 284; Giris Vrs. Bepin, (1917) 27 CLJ 535; Bama Charan Vrs. Nimai Mandal, (1933) Cal 114. This wholesome doctrine applies not only to the successive stages of the same suit, but also to another suit than the one in which the position was taken up, provided that the second suit grows out of the judgment in the first.’*

****”*



8.13. To demonstrate there has been consistent approach of different courts and tribunals that it is the WMT which is relevant factor for determination of Fe content of the exported goods for the purpose of levy of duty, the learned Senior Advocate for the petitioner referred to:

- i. *Union of India Vrs. Gangadhar Narsingdas Aggarwal, (1997) 10 SCC 305 = (1997) 68 ECR 529 = (1997) 89 ELT 19 (SC);*
- ii. *V.M. Salgaocar and Brother Pvt. Ltd. Vs. The Assistant Commissioner of Customs (Export) and others, MANU/MH/3444/2022 [Bombay High Court (Goa Bench)];*
- iii. *Commissioner of Customs (Preventive), BBSR Vrs. Kai International Private Limited, (2025) 29 Centax 178 (Ori);*
- iv. *Commissioner of Customs (Preventive), Bhubaneswar Vrs. Chamong Tee Exports Private Limited, 2025 SCC OnLine Ori 2932 = 2025 (III) ILR-CUT 1;*
- v. *Commissioner of Customs (Preventive) Vrs. Essel Mining and Industries Ltd., 2026 SCC OnLine Ori 145.*

8.14. It is held in *CCE Vrs. Frick India Ltd., (2007) 14 SCC 31* that the concept of “classification” is different from the concept of “valuation”⁵. Thus, as demonstrated by the

⁵ In *Commissioner of Central Excise Vrs. Frick India Limited, (2007) 10 SCR 172* it has been observed thus:

“14. Chargeability from excise duty is on the manufacture of excisable goods. The assessee has to pay duty on the manufacture of such goods. With



petitioner, the transactions of export on the date of bill of lading and/or clearance of goods for exportation by the proper officer on being satisfied attracted *nil* customs duty as Fe content of iron ore fines calculated on the basis of WMT in terms of Circular dated 17.02.2012 were below 58%. The Commissioner of Customs has completely discarded to apply the method or manner specified in the Circular and the Letter dated 11.09.2023 of the Customs House Laboratory.

8.15. Though the Circular No.04/2012-Customs, dated 17.02.2012 issued by the CBIC is binding on the authority concerned, he felt that the same is not applicable to the present set of factual scenario. It is revealed from the Order-in-Original that:

“4.33.7. From the foregoing discussions above, I hold that the issue of DMT vs. WMT is not applicable in the instant case, as I have observed that the exporter has procured the majority of Iron Ore Fines with Fe content exceeding 58%, as indicated in Form but declared the same as below 58% in the Shipping Bills at the time of export. Further, the exporter’s argument – that Iron Ore Fines (IOF) should be assessed based on Circular No.04/2012-Customs dated 17.02.2012 is not sustainable in this case, because it is evident from the statutory E-form that the exporter purchased IOFs with Fe content of more

chargeability, question of quantification of duty comes in. Classification decides the applicable rate. It is followed by valuation i.e. value on which the rate is to be applied. The concept of ‘classification’ is, therefore, different from the concept of ‘valuation’.”



than 58% in WMT, but declared the same as less than 58% in the shipping bills. This is a clear instance of fraud and deliberate misrepresentation, where the exporter knowingly submitted false/fabricated documents to Customs, colluded with third parties, and established an intricate network to conceal the true nature of its transactions with the intent to evade approximately Rs.731.50 crore in legitimate customs duties. The evidence relied upon in the SCN dated 18.12.2023 proves that the exporter submitted false declarations to Customs, establishing a “knowing” intent. The fraud involved forging government permits (FORM-I), colluding with testing laboratories to obtain manipulated quality certificates, and using dummy companies in Hong Kong and Singapore to create a façade of legitimacy while hiding the true nature and value of the goods from Customs authorities. Based on comprehensive evidence of fraud, the exporter is liable for the differential duty demanded and penalties under the Customs Act, 1962, for misdeclaration, suppression of facts, and collusion making the subject goods liable for confiscation under Section 113(1) of the Customs Act, and the Noticees are liable for penalties, under Sections 114 and 114AA for wilful misstatement, document falsification, and duty evasion.”

8.16. From the above finding of fact it appears that the evidence on record has been analysed with respect to fraud/collusion/misdeclaration etc. by the Commissioner of Customs (Preventive); nevertheless, it is



apparent that the method of assessment has not been made on the basis of WMT.

8.17. At this stage, it may be relevant to have reference to *BSNL Vrs. Union of India*, (2006) 3 SCC 1 wherein it has been laid down that:

- “19. *To a similar effect is Junior Telecom Officers Forum Vrs. Union of India*, 1993 Supp (4) SCC 693 where the appellants had intervened in the earlier proceedings. After the controversy was decided in those proceedings the appellants sought to reagitate the same issues in respect of the same matter contending that they had no opportunity of being heard. The submission was rejected and it was held that the second round was impermissible.
20. *The decisions cited have uniformly held that res judicata does not apply in matters pertaining to tax for different assessment years because res judicata applies to debar courts from entertaining issues on the same cause of action whereas the cause of action for each assessment year is distinct. The courts will generally adopt an earlier pronouncement of the law or a conclusion of fact unless there is a new ground urged or a material change in the factual position. The reason why the courts have held parties to the opinion expressed in a decision in one assessment year to the same opinion in a subsequent year is not because of any principle of res judicata but because of the theory of precedent or the precedential value of the earlier pronouncement. **Where facts and law in a subsequent assessment year are the same, no***



authority whether quasi-judicial or judicial can generally be permitted to take a different view.

This mandate is subject only to the usual gateways of distinguishing the earlier decision or where the earlier decision is per incuriam. However, these are fetters only on a coordinate Bench which, failing the possibility of availing of either of these gateways, may yet differ with the view expressed and refer the matter to a Bench of superior strength or in some cases to a Bench of superior jurisdiction.”

8.18.Regard may be had to following enunciation of principle by the Hon’ble Supreme Court of India in *Siddachalam Exports Private Ltd. Vrs. Commissioner of Central Excise, Delhi-III, (2011) 4 SCR 695*:

“14. *It is trite law that the amplitude of an appeal under Section 130E(b) of the Act, in relation to the rate of duty of customs or to the value of goods for the purposes of assessment, is very wide but it is equally well settled that **where the CESTAT, a fact finding authority, has arrived at a finding by taking into consideration all material and relevant facts and has applied correct legal principles, this Court would be loathe to interfere with such a finding even when another view might be possible on same set of facts.** Nevertheless, if it is shown that the conclusion under challenge is such as could not possibly have been arrived at by a person duly instructed upon the material before him, i.e., conclusion is perverse or that the CESTAT has failed to apply correct principles of law, this Court is*



competent to substitute its own opinion for that of the CESTAT.

15. *Having bestowed our anxious consideration to the facts at hand, we are constrained to observe that the decisions of both the authorities below are unsustainable. In our opinion, neither the Commissioner nor the CESTAT has examined the issue before them in its correct perspective and as per the procedure contemplated in law for determination of the value of the goods for exportation.*
16. *It is settled that the procedure prescribed under Section 14(1) of the Act and particularized in Rule 4 of the 1988 Rules has to be adopted to determine the value of goods entered for exports, irrespective of the fact whether any duty is leviable or not. It is also trite that ordinarily, the price received by the exporter in the ordinary course of business shall be taken to be the transaction value for determination of value of goods under export, in absence of any special circumstances indicated under Section 14(1) of the Act and Rule 4(2) of the 1988 Rules. The initial burden to establish that the value mentioned by the exporter in the bill of export or the shipping bill, as the case may be, is incorrect lies on the Revenue. Therefore, once the transaction value under Rule 4 is rejected, the value must be determined by sequentially proceeding through Rules 5 to 8 of the 1988 Rules. [See: Commissioner of Customs (Gen), Mumbai Vrs. Abdulla Koyloth, (2010) 5 GSTR 571 (SC).]*
17. *In Om Prakash Bhatia Vrs. Commissioner of Customs, Delhi, (2003) 6 SCC 161, while dealing*



with a similar case of fraudulent drawback claim by deliberately over-invoicing ready-made garments, this Court rejected the plea of the exporter that Section 113(d) of the Act was not applicable to the facts of that case as the goods were not prohibited goods; (ii) the exporter was required to declare the value of the goods expected to be received from the overseas purchaser and not the market value of such goods in India and (iii) since in that case, no duty was payable on the export, Section 14 of the Act could not be applied to determine the value of the goods. It was, inter-alia, held that the definition of 'prohibited goods' in Section 2(33) of the Act indicates that if the conditions prescribed for import or export of the goods are not complied with, it would be considered to be 'prohibited goods'. It was held that for determining the export value of the goods, it is necessary to refer to the meaning of the word 'value' as defined in Section 2(41) of the Act and the same must be determined in accordance with the provisions of sub-section (1) of Section 14 of the Act. The Court observed thus:

*“*** For determining the export value of the goods, we have to refer to the meaning of the word 'value' given in Section 2(41)⁶ of the Act, which specifically provides that value in relation to any goods means the value thereof determined in accordance with the provisions of sub-section (1) of Section 14. Section 14 specifically provides that in case of assessing the value for the purpose of export, value is to be determined at the price at which such or like goods*

⁶ Section 2(41) of the Customs Act, defines the term “value” as:
“(41) ‘value’, in relation to any goods, means the value thereof determined in accordance with the provisions of 1/sub-section (1) or sub-section (2) of section 14;”



*are ordinarily sold or offered for sale at the place of exportation in the course of international trade, where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for sale. **No doubt, Section 14 would be applicable for determining the value of the goods for the purpose of tariff or duty of customs chargeable on the goods.** In addition, by reference it is to be resorted to and applied for determining the export value of the goods as provided under sub-section (41) of Section 2. This is independent of any question of assessability of the goods sought to be exported to duty. Hence, for finding out whether the export value is truly stated in the shipping bill, even if no duty is leviable, it can be referred to for determining the true export value of the goods sought to be exported.'*

18. *The opinion expressed in Om Prakash Bhatia (supra) has been reiterated by this Court in Bibhishan Vs. State of Maharashtra, (2007) 12 SCC 390. It has been held that the definition of 'prohibited goods' in the Act is a broad one and the said provision not only brings within its sweep an import or export of goods which is subject to any prohibition under the Act, but also any of the law for the time being in force."*

8.19. Having found the Commissioner of Customs while finalising the shipping bill did not apply correct method to determine the Fe contents (classification of goods) so as to apply the rate of duty on the value determined in accordance with the statutory provisions with reference to date of occurrence of the taxable event *qua* export, the



Order-in-Original cannot be countenanced in law; and hence, the same deserves to be set aside. While observing that the Commissioner of Customs (Preventive), Bhubaneswar ought to have applied WMT instead of DMT method in order to arrive at the weight of iron ore fines (Fe content), it is desirable that the said authority should re-do the adjudication.

Conclusion:

9. Having thus analysed the material placed before this Court and upon diligent consideration, it can be said that since the transactions of export relate to prior to enforcement of amendment in the Customs Tariff Act, 1975 by virtue of the Finance Act, 2022, the method of calculation would be governed by the extant statutory provisions, rules framed thereunder and circular(s) on the date of taxable event.
 - 9.1. It is relevant to take note of the observation contained in paragraph 4.4.1 of the Order-in-Original that the SCN was issued based on certificates from China's Entry-Exit Inspection and Quarantine (CIQ) indicating Fe content of received goods at their end was "more than 58% in some cases where M/s. SMNPL had declared it below 57%" and as against certification of TCRC-Singapore (subsidiary of TCRC-India) depicted Fe content being more than 60%; whereas TCRC, India reported Fe



content at below 58%. The petitioner disputes, which remained unanswered by the opposite parties, that it is unknown whether TCRC, Singapore has certified on DMT basis or WMT basis. Therefore, it is submitted that the certificate issued by the TCRC-India ought to be accepted and followed.

9.2. This Court is not brought to notice by the learned Senior Standing Counsel with respect to consideration of time-lag between the certificates on the basis of samples of goods. As is apparent from the record, TCRC, India certified percentage of Fe content in close proximity of “Entry of goods for exportation” [Section 50] and “Clearance of goods for exportation” [Section 51]. Referring to Chapter Heading 2601 11, 2601 12 and Tariff Items under 2601 read with Notification No.15/2016-Customs, dated 01.03.2016 it is submitted by the petitioner (written note of submission dated 11.12.2025) that tariff items covering iron ore/iron ore fines with Fe content less than 58% are exempt from levy of customs duty; whereas iron ore fines with Fe content of 58% or more being covered by Tariff Item Nos.2601 11 43 and 2601 11 49 would attract levy of duty at 30%. Reading paragraph 4.10 of the Order-in-Original percolates no ambiguity in mind that the petitioner had not disclosed entire stock of iron ore fines exported at below 58%. It is revealed from the finding of



the authority concerned that the petitioner has paid customs duty by applying the rate on the goods exported having Fe content more than 58%. In the written note of submission dated 11.12.2025 it has been highlighted by the counsel for the petitioner that although in one of the statements of co-petitioner a specific reference was made to CRCL report, which was also made known to the Adjudicating Authority by way of reply to SCN, sphinx silence is maintained in this regard while passing Order-in-Original. No answer is available with the learned Senior Standing Counsel as against the statement made by the petitioner through its counsel that “impugned Order *vide* Paragraphs 2.2.9 and 3.2.6 (at pages 635 and 637 of the writ petition) records that the co-petitioner duly requested for consideration of CRCL reports. Despite this, the impugned Order is completely silent on the CRCL reports”.

9.3. Reference to following observations made in *Reliance Cellulose Products Ltd. Vrs. CCE, (1997) 6 SCC 464* may be apposite to be taken note of in this context:

“12. These orders are not under challenge before this Court. We were referred to a number of test reports obtained by the appellant from various persons and on the basis of these opinions, the reports of the Departmental Chemical Examiner and also the Chief Chemist were assailed. We are of the view that the Assistant Collector cannot be said to have erred in



relying upon the reports given by the Chemical Examiner and the Chief Chemist. It may be that in a given case, the report of the Chief Chemist may be demonstrated to be palpably wrong. In such a case, the Court may direct re-examination of the whole issue. But that is not the case here. It has not been shown that the Chemical Examiner or the Chief Chemist were in error in their analysis in any way. The views expressed by the Chief Examiner and Chief Chemist of the Government cannot be lightly brushed aside on the basis of opinion of some private persons obtained by the appellant.

13. *Under Rule 56 of the Central Excise Rules, the Central Excise Officer is empowered to take samples for the purpose of testing the samples. He has to communicate the result of such tests to the manufacturer. If the manufacturer is aggrieved by the result of the test, he can request the Assistant Collector that the samples be re-tested. That procedure has been followed. Therefore, there is no procedural infirmity in the order of the Assistant Collector nor has it been established that the Assistant Collector was wrong in relying on the report of the Chemical Examiner and Chief Chemist in preference to the opinion obtained by RCPL from some private individuals.”*

9.4. Suffice it to say that the factual controversy can be resolved by the statutory authority by quantifying the iron ore fines having below 58% Fe content and more than 58% Fe content and computing on the WMT basis. This Court with respect to acceptance of certification of accredited companies on the basis of WMT has



elaborately discussed in *Commissioner of Customs (Preventive) Vrs. Essel Mining and Industries Ltd., 2026 SCC OnLine Ori 145*. It may be pertinent to accede to the submission of the petitioner that Form E mandates the recording of mineral quantities in WMT on natural basis/as received basis/WMT, primarily for standardization, accurate revenue calculation and effective enforcement. It is submitted by the petitioner that such disclosure in Form E is made excluding the moisture content.

9.5. Though many grounds have been taken by way of pleadings in the writ petition to attack the Order-in-Original, during the course of hearing, the arguments were confined to adjudication of whether the calculation of Fe content of the exported iron ore fines would be on the basis of DMT or WMT, for the transactions of export effected were prior to enforcement of amendment in the Customs Tariff Act, 1975 by virtue of the Finance Act, 2022, which is posed in the written note of submission dated 09.03.2026.

9.6. This Court on going through the Order-in-Original also finds that the replies to the SCN of the petitioner have not been dealt with in proper perspective.

9.7. Therefore, this Court having analysed entire gamut of factual position as obtained in record and upon hearing



the counsel appearing for both the sides on the subject comes to conclusion that the Commissioner of Customs (Preventive), Bhubaneswar has proceeded to adjudicate the Fe content to be more than 58% on the basis of DMT, which in the considered opinion is erroneous approach and such finding rendered in the Order-in-Original is perverse and inconsistent and conflicts with the settled position of law in this regard.

10. As the petitioner has confined its challenge to question the method of determination of weight of iron ore fines for the purpose of considering whether duty would be *nil*, this Court does not have scope to go into the merit of the matter by analysing each shipping bill which is domain of the Adjudicating Authority. Furthermore, with respect to the allegation of fraud, the same is to be factually decided on proper evidence, confrontation and by affording opportunity.

10.1. It is found that the Commissioner of Customs (Preventive), Bhubaneswar erred in not determining the percentage of Fe content in the iron ore fines exported out of the country on WMT basis. For the reasons assigned and discussion made, the Order-in-Original dated 24.09.2025 passed by the Commissioner of Customs (Preventive), Bhubaneswar *vide* Annexure-11 warrants interference inasmuch as the said Order



cannot be sustained. Hence, the said Order is hereby set aside.

10.2. As a consequence thereof, the matter is remitted to the Commissioner, Customs (Preventive), Bhubaneswar to adjudicate the liability or otherwise by classifying appropriately the iron ore fines on the basis of WMT. Said Authority is further directed to adhere to the principles of natural justice by affording reasonable opportunity of hearing and confronting the material collected behind the back of the petitioner and wished to be utilised in course of assessment.

10.3. The entire exercise of assessment is directed to be completed not beyond four months from date.

11. In the result, the writ petition is allowed to the extent indicated above, but in the circumstances with no order as to costs. Pending Interlocutory Applications, if any, shall stand disposed of accordingly.

I agree.

(HARISH TANDON)
CHIEF JUSTICE

(MURAHARI SRI RAMAN)
JUDGE

Signature Not
Verified

Digitally Signed
Signed by: ASWINI KUMAR
SETHY
Designation: Personal Assistant
(Secretary-in-Charge)
Reason: Authentication
Location: ORISSA HIGH
COURT, CUTTACK
Date: 27-Apr-2026 15:49:09

High Court of Orissa, Cuttack
The 27th April, 2026/Aswini/Bichi/Laxmikant