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ORISSA HIGH COURT : CUTTACK

OTAPL No.50 of 2025

In the matter of an Application under
Section 130 of the Customs Act, 1962.

* * *

Commissioner of Customs (Preventive)
Central Revenue Building
Rajaswa Vihar, Bhubaneswar
District: Khordha
Pin: 751007, Odisha. ... Appellant

-VERSUS-

M/s. Essel Mining and Industries Ltd.,
18th Floor, Industry House,
Camac Street,
Kolkata-700014. ... Respondent

Counsel appeared for the parties:

For the Appellant : Mr. Bismay Anand Prusty,
Senior Standing Counsel
GST, Central Excise
and Customs

For the Respondent : Mr. Rudra Prasad Kar
Senior Advocate
assisted by
M/s. Sidharth Shankar Padhy,
Prayas Mohanty,
Subhrajeet Jena and
Manas Ankit Bohidar, Advocates



P R E S E N T:

**HONOURABLE CHIEF JUSTICE
MR. HARISH TANDON**

AND

**HONOURABLE JUSTICE
MR. MURAHARI SRI RAMAN**

Date of Hearing : 18.12.2025 :: Date of Judgment : 15.01.2026

JUDGMENT

MURAHARI SRI RAMAN, J.—

This appeal under Section 130 of the Customs Act, 1962 (for short, “the Act”) filed by Commissioner of Customs (Preventive) is directed against Final Order No.77815/2024, dated 04.12.2024 in Customs Appeal No.75881 of 2023 passed by the Customs, Excise and Service Tax Appellate Tribunal, Eastern Zonal Bench, Kolkata (be referred to as, “the CESTAT”) arising out of Order-in-Appeal No.72/CUS/CCP/2023, dated 08.06.2023 passed by the Commissioner (Appeals), GST, CX and Customs, Central Revenue Building, Rajaswa Vihar, Bhubaneswar-751007, Odisha, where the following question(s) of law for adjudication are suggested for formulation:

- “(i) *Whether on the facts and circumstance of the case, the learned Tribunal is correct as per law and facts in dismissing the appeal filed by Department against the Order-in-Appeal No.72/CUS/CCP/ 2023, dated 09.06.2023 passed by the Commissioner (Appeal),*



Bhubaneswar ignoring the errors in the said Order-in-Appeal dated 09.06.2023?

- (ii) *Whether on the facts and circumstances of the case, the NABL Accredited Private Testing Agency's test report, where the test sample is not a representative one as it is solely drawn by the exporter themselves without the presence of Customs (which is meant for smooth business transactions between the buyer and seller as per the contract between them) can be accepted in this case for payment of Government duty, when the CRCL report, where the sample is drawn in the presence of both the Customs (Government) and the exporter/representatives of the exporter as per the guidelines issued under CBIC Circular No.12/2014-Cus, dated 17.11.2014 is also available?*
- (iii) *Whether on the basis of the facts and circumstances of the case, the learned Tribunal is correct in discarding the test report of Chemical Examiner, CRCL, Kolkata and considering the test report of NABL Accredited Private Testing Agencies for determining the levy of export duty holding that the Final invoice and Bank Realisation Certificate has been issued on the basis of such test reports as per the terms and condition of the contract between the buyer and seller, when the said reports of the NABL Accredited Private Testing Agencies are not relevant for the Government for payment of duty on the export consignments as the test samples used by such Private Testing Agencies are not representative one as the same has been solely drawn by the exporter without the presence of the Government (Customs Officer) in terms of Circular No.12/2014-*



Cus, dated 17.11.2014, whereas the CRCL test report is based on the sample drawn in presence of both the Government (Customs Officer) and the exporter?

- (iv) *Whether on the basis of the facts and circumstances of the case, the Ld. Tribunal is justified in discarding the test report of CRCL, Govt. of India, Kolkata which is based on the representative test samples in terms of CBIC Circular dated 17.11.2014, holding that the test reports of the NABL Accredited Testing Agencies are more accurate being nearer to the sampling date, when there is no time limit prescribed under the act or rules made there under for testing of samples and also when the said test reports of the Private Testing Labs are not based on the representative samples as the same has been drawn solely by the exporter without the presence of the Customs in terms of CBIC Circular dated 17.11.2014?*
- (v) *Whether on the basis of the facts and circumstances of the case, the findings of the Ld. Tribunal that the CRCL test report is not relevant to this case as the goods exported was in moist form and the test report is for the dry form can be accepted, when all the test reports be it CRCL or NABL Accredited Testing Agencies are in dry form only?"*

Case of the petitioner:

- 2.** The relevant facts, as adumbrated by the appellant in the instant appeal for rendering a decision on the suggested questions of law as posed above, are narrated *infra*:



- 2.1. M/s. Essel Mining and Industries Limited (Respondent) submitted two Shipping Bills, bearing No.9089712, dated 03.03.2021 and No.9152539, dated 06.03.2021 indicating Iron Ore Fines of Indian Origin for export of 55,480 Wet Metric Tonne (for brevity, “WMT”) and 355 WMT respectively per vessel, MV BEAUFORT.
- 2.2. Taking into consideration the pre-shipment analysis report of M/s. Mitra S.K. Private Ltd., Bhubaneswar, an NABL accredited testing agency,¹, (named hereinafter as “SKM”), customs duty was determined at “NIL” in the provisional assessment of these Shipping Bills, treating the Iron Ore Fines for export falling within the ambit of Customs Tariff Heading: 26011142 in terms of Entry Serial No.20A *vide* Notification No.27/2011-Cus, dated 01.03.2011.
- 2.3. Samples were drawn by the Customs Officer in presence of the exporter-Customs House Agent at the time of export *vide* Test Memo No.170/20-21, dated 12.03.2021 and Test Memo No.173/20-21, dated 16.03.2021 and sent for examination to the Central Revenues Control Laboratory, Kolkata (in short be called “CRCL”)². Iron

¹ NABL Accredited Private Testing Agencies refers to private laboratories that have received accreditation from the National Accreditation Board for Testing and Calibration Laboratories (NABL), an autonomous body in India that ensures labs meet international standards for quality and competence in testing, calibration, and medical diagnostics, making their results reliable and globally recognized.

² The Central Revenues Control Laboratory (CRCL) is the headquarters laboratory of the Central Board of Indirect Taxes & Customs (CBIC), which falls under the Ministry of Finance, Government of India. CRCL and associated revenue



contents (popularly known as, “Fe content”) of the subject Iron Ore Fines were found to be 60.9% and 59.1% respectively as per test results of CRCL.

2.4. While finalising the Shipping Bills, scrutiny of documents such as, copies of Commercial Invoice, e-BRC (Bank Realisation Certificates), Certificate of Quality, Certificate of Weightage, Bill of Lading and Contract was undertaken along with test reports of CRCL depicting “Fe content” of the sample of Iron Ore Fines exported, found to be more than 60% and 58%. The Assistant Commissioner, Gopalpur Customs Division, Gopalpur (for convenience, “Assessing Officer”) accepting the test reports of the CRCL as correct depiction of fact and figures and discarding the test report of SKM, quantified the assessable value and levied customs duty to the tune of Rs.13,50,87,258/- *vide* Order dated 08.10.2021.

2.5. Being aggrieved by such final assessment dated 08.10.2021, the exporter filed an appeal before the Commissioner (Appeals), Bhubaneswar (to be referred to as “Appellate Authority”) under Section 128 of the Customs Act. The Appellate Authority disposed of the appeal *vide* Order-in-Appeal No.72/CUS/CCP/2023,

laboratories play a vital role in the administration and enforcement of the Customs Act, 1962, and other allied Acts (such as the Narcotic Drugs and Psychotropic Substances Act, 1985 and Goods and Services Tax laws).



dated 08.06.2023, *inter alia* with the following observations:

- a) As per Contract No. EMIL/INTLMKT/202-21/CML/21, dated 23.02.2021, the Iron Ore Fines were to be supplied to foreign buyers, namely, M/s. Caravel Metallurgical Limited with the specification that the “Fe content” would have to be less than 58%.
- b) In view of the decision in *Taurion Iron and Steel Company Private Limited Vrs. Commissioner of Central Excise, Visakhapatnam, 2009 (241) ELT 390 (Tri-Bang.)*, it is prudent not to discard certification of very reputed organisation (SKM), and accepted the “Fe contents” of the consignment of the goods exported from Gopalpur Port per MV BEAUFORT at below 58%.
- c) Since there was time lag in conducting the test conducted by CRCL, relying on *Bagadiya Brothers Pvt. Ltd. Vrs. Commissioner of Customs and Central Excise, Visakhapatnam-IV, 2010 (249) ELT 387 (Tri.-Bang)* and *Alpine International Vrs. Commissioner of Customs, Mangalore, 2008 (224) ELT 331 (Tri.Bang)* test reports of SKM could not be discarded lightly in deference to the test report submitted by the CRCL, Kolkata.



d) As held in *Dunlop India Limited and Madras Rubber Factory Limited Vrs. Union of India and others, 1983 (13) ELT 1566 (SC)* that the assessment of the exported goods is required to take place in the condition in which the goods were at the time of export and the exported goods were to be classified in the form and condition at the time of exportation, the SKM reports being based on such contemporaneous factors, the reports of the CRCL would not inspire confidence to accede to the determination made by the Assessing Officer.

On the aforesaid analysis and observations, the Order-in-Original No.CUS/GCD/AC/118/SB/111, dated 08.10.2021 passed by the Assessing Officer was set aside and consequently, the appeal was allowed.

2.6. Assailing the observations and findings made in the Order-in-Appeal, dated 08.06.2023, the Commissioner of Customs (Preventive), Bhubaneswar Commissionerate, Central Revenue Building, Rajaswa Vihar approached the learned CESTAT by way of filing appeal under Section 129A of the Customs Act. The said appeal came to be disposed of *vide* Final Order dated 04.12.2024 with the observation that the appeal filed by the Revenue, being devoid of merit, is dismissed and, thereby upheld the Appellate Order.



2.7. Challenging the said order passed by the learned CESTAT, the Revenue preferred the present appeal under Section 130 of the Customs Act formulating the questions of law, as has already been extracted *supra*.

Hearing:

3. On 18.12.2025 the matter was on board under heading “Fresh Admission”. Since short point is involved to examine whether the questions of law as posed by the Revenue are “substantial questions of law”, on the consent of the learned counsel for the respective parties, the matter is heard finally.

3.1. Accordingly, heard Sri Bismay Anand Prusty, learned Senior Standing Counsel for the Appellant and Sri Rudra Prasad Kar, learned Senior Advocate assisted by Sri Sidharth Shankar Padhy, learned Advocate for the Respondent.

Arguments:

4. Sri Bismay Anand Prusty, learned Senior Standing Counsel submitted that the test report of the CRCL, Kolkata, being significant piece of evidence, having probative value, it ought not to have been discarded and there is no justified reason to give precedence to the report submitted by a reputed organisation, *viz.*, SKM, being NABL Accredited Private Testing Agency.



- 4.1. Highlighting erroneous approach of the learned CESTAT in not acceding to the plea set up by the Revenue by accepting sanctity of report of the CRCL, Kolkata, an argument is advanced by the learned Senior Standing Counsel that the test reports furnished by the exporter chosen testing agency should not have been given priority over the test reports of the CRCL. It is unknown to the Customs Department about the sample drawn by the exporter was from the consignment of Iron Ore Fines exported. It is vehemently contended that as the test reports of the CRCL, Kolkata being based on sample drawn at the time of export in the presence of the exporter or its representative and the Customs Officers, such report should have been given credence having probative value.
- 4.2. Hence, he submitted that the learned CESTAT should have favoured the appellant by overturning the view expressed by the Appellate Authority and restoring the demand raised in the final assessment framed by the Assessing Officer.
- 4.3. Expanding his arguments, learned Senior Standing Counsel referring to Circular dated 17.02.2012 issued by the Central Board of Indirect Tax and Customs³ (be referred to as “CBIC”), submitted that though the

³ Formerly known as the Central Board of Excise and Customs (popularly known as “CBEC”).



percentage of “Fe content” of the goods exported is to be calculated on the basis of WMT, it does not warrant to depend on the test report submitted by the NABL Accredited Private Laboratory. No sanctity can be attached to the reports submitted on examination of samples drawn in the absence of Customs Officers. Laying stress on the Circular No.12/2014-Customs, dated 17.11.2014 issued by the Central Board of Customs and Excise, Department of Revenue, it is submitted that the reports of the CRCL, Kolkata is sacrosanct and the learned CESTAT proceeded on an erroneous perception by stemming heavily on the test reports of SKM. The finding of fact being contrary to aforesaid Circular dated 17.11.2014 even though the final invoice price was payable or paid on the basis of reports prepared by M/s. Mitra S.K. Private Limited, an NABL Accredited Private Laboratory, it is contended that substantial question of law does arise out of the order of the learned CESTAT.

5. Sri Rudra Prasad Kar, learned Senior Advocate appearing for the Respondent submitted that unless there is sufficient material to demonstrate that the sample drawn by the exporter and examined by SKM is not the same as that of the exported goods, the finding of fact cannot be impeached as perverse inviting indulgence of this Court in appeal under Section 130 of



the Act. As there was no dispute before the Appellate Authority with respect to sample tested by the SKM nor was there any ground or material before the CESTAT to contradict such fact returned by the Appellate Authority, it could not be said that substantial question of law did arise in the instant case.

5.1. Sri Rudra Prasad Kar, learned Senior Advocate drew attention of this Court to the following factual details found mentioned in the Order-in-Appeal:

“14. The captioned letter has relied upon a report by the Chemical Laboratory, Customs House, Kolkata which states that the total iron content (on dry basis) tested by laboratory:

Sl. No.	Name of the Vessel	Shipping Bill No. and Date	Fe content	Moisture content	Lab. No. and date of forwarding	Report date
1.	MV BEAUFORT	9089712, dated 03.03.2021	59.1%	2.0%	69/26-Exp dated 05.04.2021	20.04.2021
2.	MV BEAUFORT	9152539, dated 06.03.2021	60.9%	1.9%	64/26-Exp dated 05.04.2021	20.04.2021

5.2. It is, therefore, submitted that as is apparent from the aforesaid table, “Fe content” is found to be more than 58% on DMT basis. Nonetheless, if the moisture is taken into account, *i.e.*, WMT basis, the “Fe content” would be less than 58%, which would match with the reports submitted by the SKM. As there is no dichotomy as to whether “Fe content” is to be determined on DMT or WMT basis for assessment of levy of customs duty in



respect of Shipping Bills prior to amendment of the Finance Act, 2022, the factual adjudication supported by legal position as enunciated by the Court/Tribunal cannot be disturbed.

- 5.3. It is submitted by the learned Senior Advocate for the Respondent that there was time gap from the date of drawing the sample and the date on which the sample was tested by the CRCL. There was significant delay which caused reduction of gross weight. The reduction in weight occurs due to factors like evaporation of moisture. The “Fe content” of gross weight of WMT would have impact on the assessment.
- 5.4. It is well-established that the finalisation of Shipping Bills by way of assessment is required to be made on the basis of WMT. It is further urged that the Customs Tariff Act, 1975 has been amended by virtue of the Finance Act, 2022 with effect from 01.05.2022 to provide that *“the percentage of “Fe content”, wherever specified, shall be calculated on the Dry Weight or Dry Metric Tonne (DMT) basis”*. Since the Shipping Bills under consideration indicated that the export was made in the year 2021, *i.e.*, prior to said amendment, the “Fe content” has seemingly been appreciated by the Appellate Authority accepting the report of the SKM which calculated the “Fe content” on the basis of WMT”. Since no factual infirmity could be attributed to the decision of



the learned CESTAT, he submitted that no substantial question of law arises from the order of the CESTAT so as to show indulgence in the matter.

5.5. Winding up his argument, the learned Senior Advocate submitted that the contentions and submissions made on behalf of the appellant is basically attack on the fact finding based on position prior to amendment of the Customs Tariff Act, 1975, *i.e.*, before enforcement of the Finance Act, 2022. Referring to Section 130 of the Customs Act, he made suave submission that this Court is invested with power to intervene in the matter only if “the case involves substantial question of law”. Since the questions of law as posed by the Appellant do require interference with the facts settled by the Appellate Authority as also the CESTAT, which are not demonstrated by the Revenue to be perverse, no “substantial question of law” can be said to have arisen in this case.

5.6. Therefore, he prayed for dismissal of appeal of the Revenue, inasmuch as howsoever erroneous it may sound, the concurrent fact-finding exercise by the learned Appellate Authority and the learned CESTAT does not warrant interference.

Discussions and analysis:



6. Scrutinised the documents forming part of the appeal and diligently considered the arguments of the Senior Standing Counsel for the Appellant and learned Senior Advocate appearing for Respondent.
7. The seminal question which transpired from perusal of the impugned Order dated 04.12.2024 of the learned CESTAT is that whether the test report of CRCL specifying Fe content of subject goods based on DMT is required to be considered in deference to the report of SKM which specified the “Fe content” of the Iron Ore Fines exported contained less than 58% on the WMT basis?
 - 7.1. The Appellate Authority taking note of contract between the Respondent and the foreign buyer came to observe that the “Fe content” of Iron Ore Fines required to be exported were to be less than 58%. The reports of SKM indicated calculation of “Fe content” of such Iron Ore Fines exported was made on WMT basis, whereas the reports of the CRCL specified “Fe content” being calculated on DMT basis. 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. Such proposition is also fortified by decisions of the learned CESTAT rendered in various other cases.



7.2. The learned CESTAT, in the case at hand, culled out the following factual position:

Shipping Bill		Load Port		Final Invoice				
S/B No.	Date	Fe % in DMT	Moistur e	Fe % in DMT	Fe % WMT	Basi s	Moistur e	Basi s
915253 9	06.03.202 1	57.56	9.71	57.5 6	51.97 1	Load Port	9.71	Load Port
908971 2	03.03.202 1	57.56	9.71	57.5 6	51.97 1	Load Port	9.71	Load Port

7.3. It is matter of record that the final invoice on the basis of which price was realized is arrived at on the basis of test report of SKM, an NABL Accredited Agency at the load port or China Inspection and Quarantine Services (“CIQ report”) at discharge port.

7.4. The intention of the contracting parties can very well be deduced from the Bills/Invoices and payments made. It is not in dispute that the payments to the Indian exporter was made on the basis of final invoice(s) prepared taking note of “Fe content” of Iron Ore Fines calculated at WMT.

7.5. In the case of *State of Gujarat (Commissioner of Sales Tax, Ahmedabad) Vrs. Variety Body Builders, 1976 Supp. SCR 131 = (1976) 38 STC 176 (SC)* it has been laid down as follows:

“It is well-settled that when there is a written contract it will be necessary for the Court to find out therefrom the intention of the parties executing the particular contract. That intention has to be primarily gathered from the terms



and condition which are agreed upon by the parties. We will, therefore, immediately turn our attention to the agreement in question.”

7.6. Turning to the material fact as available in the Orders of the Authorities, it is found from the Order-in-Original that:

*“In the instant case the dutiability of Iron Ore Fines, exported by the exporter is determined by the percentage of Fe content of the subject Iron ore fines. Similarly, the price of the subject Iron Ore Fines is governed by the contract as agreed between exporter and buyer. As per the relevant Contract No. EMIL/INTLMKT/20-21/CML/21, dated 23.02.2021, value of the goods is to be determined on the basis of Load Port Certificate of Quality, i.e., % of moisture, Fe % and SiO₂% or silica, and other elements (Article 1, 2, 3, 4, 5, 7, 8 and 9 of the contract may be referred to. ****

Assessable value (final) arrived as follows:

Final Invoice No. EMIL/EXP/26A/20-21/, dated 07.06.2021

<i>Fe content (As per Certificate of Quality at Load Port</i>	<i>57.56%</i>
<i>Moisture (As per Certificate of Quality)</i>	<i>9.71%</i>
<i>SiO₂ (As per Certificate of Quality)</i>	<i>5.68%</i>
<i>Al₂O₃ (As per Certificate of Quality)</i>	<i>5.61%”</i>



Further, as per e-BRC, as submitted by exporter, it is noticed that the amount remitted against the subject consignments are in conformity with the Final Invoice based on Load Port Quality Certificate.”

7.7. The Appellate Authority in his Order-in-Appeal dated 08.06.2023 recorded following fact:

“As per the sales contract the Fe specification is agreed by parties in the contract. The various sales contracts entered by the parties clearly depicts that the Fe content as agreed by both the parties is less than 58%. Since the Fe content is decided at the beginning, the question of modification of sales contract later to accommodate more than 58% Fe in Iron ore fines is legally not viable.”

7.8. It is concluded by the learned CESTAT *vide* Final Order dated 04.12.2024 as follows:

“9.3. We observe that Clauses 7 and 8 of the Contract mentions that the Load Port Test Report results have become final for determining the Fe, moisture and other contents/impurities for the purpose of issuance of final invoice and accordingly, the final invoice is issued and remittances of export proceeds received from foreign buyer, which is duly supported by BRC.

*9.4. The valuation of exported Iron ore fines has to be derived based on terms of contract with foreign buyer and as per the contractual agreement. Accordingly we find that Load Port Test Report/Test Certificate in the present case would be the decisive factor for the determination of the iron content ***.”*



7.9. From the above it is crystal clear that the agreed terms between the Indian exporter and the foreign buyer have been fulfilled. Hence, this Court does not find any perversity in factual recording by the Authorities and the Tribunal that it was the intention of the parties to supply Iron Ore Fines having Fe content of less than 58% and the foreign buyer did make payment on receipt of such exported Iron ore fines bearing less than 58% Fe content based on WMT basis, as per the norm prevailing at the relevant point of time.

8. Now turning to the point raised by the Appellant to examine the correctness of approach adopted by the Revenue, it is vehemently contended by the learned Senior Standing Counsel that application of customs duty would be on the quality of Iron Ore Fines based on Fe content calculated on DMT basis, but not the WMT basis, as held by the Appellate Authority and found to be correctly applied by the CESTAT.

8.1. The learned CESTAT proceeded to decide the issue “whether the export duty can be levied based on the test report of Chemical Examiner of the CRCL or not, when the final invoices/realised price is arrived at on the basis of the test report of a NABL Accredited Agency at load port or CIQ report at discharge port or any other formula, as per the terms and conditions of agreement between the buyer and seller?”



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, 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) 68 ECR 529 = (1997) 89 ELT 19 (SC) = (1997) 10 SCC 305, 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.”

8.4. 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, 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., 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 and Others*, (2020) 77 GSTR 225 (Ori) = 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)*, 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.

8.7. The learned CESTAT took cognizance of Circular No.04/2012-Cus, dated 17.02.2012 issued by the CBIC, wherein directions are issued to all officers to follow a particular procedure. The learned Tribunal observed that the report of the CRCL is based on the sample drawn in “dry form”. On facts, the learned Tribunal came to hold that the report of NABL Accredited Agency is on the basis of WMT, whereas the report of the CRCL is on DMT basis and, thus, it sustained the decision of the Appellate Authority. To fortify the view so expressed the learned Tribunal has made following observation:

“7.3. We also observe that the above view is supported by Hon’ble High Court of Bombay at Goa in a similar case, in V.M. Salgaocar and Brother P. Ltd. Vrs. Assistant Commissioner of Customs (Export) and Ors., Writ Petition No.216 of 2022 vide Order passed on 23.09.2022, has observed that:



‘50. *** the wet (WMT) method was consistently followed even after the new regime on the ad valorem basis was introduced w.e.f. 13 June, 2008 for all these years from the time the principles of law recognizing the Wet method, had found approval of the Supreme Court in Gangadhar Agrawal’s case in the year 1995 (9th August, 1995). It was not thought appropriate by the legislature to take any legislative steps to have a regime different from what was recognized and followed, as laid down in the said decision of the Supreme Court or in other words to substitute the Wet (WMT) method. This is clear from the fact that such modification from the Wet method to the Dry method, has been very recently introduced by an amendment which is brought about w.e.f. 1st May, 2022. ***’

7.4. We observe that the following orders on this issue also supports the case of the respondent:

- i. Vedanta Ltd. Vrs. Commissioner of Customs (Prev.), Bhubaneswar, Final Order No.76352 of 2023 dated 18.08.2023 in Customs Appeal No.79383 of 2018, CESTAT, Kolkata;
- ii. Bagadiya Brothers Pvt. Ltd. Vrs. Commissioner of Customs (Port), Kolkata, Final Order Nos.76644-76645 of 2023 dated 15.09.2023 in Customs Appeal No.75008 of 2021 and anr., CESTAT, Kolkata;
- iii. Bonai Industrial Co. Ltd. & ors. Vrs. Commissioner of Customs, Visakhapatnam, Final Order Nos.A/30317-30324/2024, dated



21.06.2024 in Customs Appeal No.25364 of 2013 and ors, 2024 (6) LCX 0074-CESTAT, Hyderabad;

- iv. *Kutch Salt & Allied Industries Ltd. Vrs. Commissioner of Customs, Vijayawada, Final Order Nos.A/30223-30224/2024, dated 01.04.2024 in Customs Appeal No.21505 of 2015-CESTAT, Hyderabad;*
- v. *Moorgate Industries (I) Pvt. Ltd. Vrs. Commissioner of Customs (Port), Kolkata, Final Order No.77639 of 2023 dated 30.11.2023 in Customs Appeal No.75506 of 2023- CESTAT, Kolkata;*
- vi. *Terapantha Foods Ltd. Vrs. Commissioner of Customs, Vijayawada, Final Order Nos.A/30231-30232/2024 dated 05.04.2024 in Customs Appeal No.22188 of 2015- CESTAT, Hyderabad.*

7.5. *We observe that the matter is covered by the decision of this Tribunal in the case of Vedanta Ltd. (formerly known as 'Sesa Sterlite Ltd./Sesa Goa Ltd.')* Vrs. Commissioner of Customs (Prev.), Bhubaneswar, Final Order No.76352 of 2023 dated 18.08.2023 in Customs Appeal No.79383 of 2018-CESTAT, Kolkata holding that moisture content has to be taken into account for arriving the final Fe content.

7.6. *This Bench, in many of the matters including the matter of Customs Appeal No.79383 of 2018 of M/s. Vedanta Ltd. (Supra), mentioned above, have concluded that for carrying out the Final Fe contents, the samples should be drawn and tested as early as*



possible. In the present case, if the number of days taken by CRCL and the number of days taken by the NABL accredited Private Labs are considered, then the Test Report issued by the NABL accredited agency will prevail over the CRCL report as they have taken less number of days than CRCL. Accordingly, in both the cases, the values arrived at in the reports by the Government Recognized Private Laboratories are likely to be more accurate, since they had completed the Testing nearer to the date of drawing of samples. As per Circular No.12/2014 dated 17.11.201, the Adjudicating Authority is bound to give proper consideration to the fact that the overseas importer has made the payment on the basis of DMT Fe content as given by the private labs, which was not done in this particular case.

7.7. *We also find that this Tribunal in the case of Customs Appeal No.75008 of 2021 and anr., vide its Final Order Nos.76644-76645 of 2023 dated 15.09.2023 in the matter of Bagadiya Brothers Private Limited (Appellant) v. Commissioner of Customs (Port), Kolkata (Respondent) & anr., authenticated the under mentioned Formula for converting the Fe content on wet basis,*

$$\text{Iron content} = Fe \times \frac{100-m}{100}$$

Where Fe is the percentage of Iron content on dry basis and M is the moisture content in the sample. It is observed that the proper officer has not considered any of the above and ignored the Circulars as well as directions issued in above mentioned decisions.



7.8. We also place our reliance upon the decision of the Hyderabad Bench of the CESTAT in the case of Kutch Salt & Allied Industries Ltd. Vrs. Commissioner of Customs, Vijayawada, Final Order Nos.A/30223-30224/2024 dated 01.04.2024 in Customs Appeal No.21505 of 2015, CESTAT, Hyderabad reported in (2024) 19 Centax 72 (Tri.-Hyd.). The relevant part of the said decision is reproduced below:

‘19. To examine this re-determination in the impugned order, we need to examine as to what is transaction value. Transaction value is the price paid or payable by the importer (buyer) to the exporter (seller) as a consideration for the goods which are exported. It is negotiated and agreed to by them in the contract. Nobody else, including the Customs officers have any role in deciding the transaction value because they are strangers to the contract. It determines the rights and liabilities between the buyer and seller. *** If the transaction value is contingent upon certain other factors as per the contract between them, it will have to be determined accordingly. Nobody else who is not a party to the contract, including the Customs Officers have any right to add or delete or modify the conditions of the contract.’ ***”

8.8. The learned Tribunal having drawn conclusion on the basis of consistent approach maintained by different Benches of the CESTAT supported by the view expressed by the High Court and the Supreme Court, there is



hardly any scope for any substantial question of law to arise out of the Order of the CESTAT.

8.9. 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 as follows:

- “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.”

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

“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*, reported in *AIR 1924 Calcutta 600 = 1923 SCC OnLine Cal 214* 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)*



*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.’ ***”*

8.11. In view of enunciation of law, this Court does not find occasion for the learned CESTAT to re-consider the issue already decided by different Benches of the CESTAT and the principle to be adopted has been set at rest by the High Court and the Supreme Court of India.

9. This Court now turns on to the point whether the learned CESTAT was justified in affirming the adaptation of the principle of calculation of Fe content in the Iron Ore Fines exported on WMT basis.

9.1. It is also relevant for the present purpose that the learned Tribunal has returned the finding of fact that the Fe content of the goods described in Shipping Bill No.9152539, dated 06.03.2021 was below 58%. Such determination was made on the basis of WMT, which attracted export duty at “NIL” rate in view of Notification No.58/2022-Cus, dated 18.11.2022 “with the classification of Iron Ore Fines under Customs Tariff Heading: 26011141”. The sample sent for testing in CRCL, Kolkata was done after a lapse of considerable number of days from collection of samples, and the



moisture is subject to evaporation by efflux of time. Time elapsed between date of drawing samples and date of testing. It is further observed on analysis of Shipping Bill No.9089712, dated 03.03.2021 that there was a substantial delay of 39 days in testing the samples from the date of collection of the samples. The Fe content as per the CRCL test report was calculated after removing moisture and other impurities, i.e., on the basis of DMT. The learned Tribunal observed that the Fe content calculated on WMT basis in respect of goods described in aforesaid Shipping Bill dated 03.03.2021 was 51.97%. Therefore, it accepted the certificate issued by SKM.

9.2. So far as valuation is concerned, the learned Tribunal, referring to Section 14 of the Customs Act⁴, which laid

⁴ Section 14 of the Customs Act, 1962 reads thus:

“14. Valuation of goods.—

(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;



down that the value of exported goods shall be the transaction value of goods, i.e., to say the price actually paid or payable for the goods, observed as follows:

“9.1. The CBIC has also directed vide Circular No.12/2014, dated 17.11.2014, the Transaction value is to be decided based on the load port test report or discharge port test report, as per terms of contract, where the proper officer shall compare the two reports as per the terms set out in the contract and finalize the provisionally assessed shipping bills, under the provision of Section 14 of the Act and the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 duly, supported by Bank Realisation Certificates for the purpose of comparison with the final invoices.

(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).”*



9.2. *From the Circular, we observe that it has been clearly clarified that the Assessments are to be Finalised on the basis of the above said Circular only. As per the said Circular, Finalisation is to be done on the basis of the following export product. This stand is substantiated by the fact that the remittance has also been received in proportion thereof only. Accordingly, the Fe contents of 57.56% in DMT as per Test Report of Load Port i.e., below 58%, is required to be honoured, which is the basis on which the price payable or paid had been arrived, Final invoice is issued and export remittances are received i.e. Transaction Value under Section 14 of the Customs Act for the exported Iron ore fines. We observe that the Customs Officers cannot change this transaction value or the stipulation of the test report of Mitra S.K. Pvt. Ltd., being the determinant of the transaction value.*

10. *In view of the above discussions, we are of the view that the report of Chemical examiner, CRCL, Kolkata cannot be used for deciding and levy of Export Duty. Thus, we do not find any infirmity in the impugned order of the learned Commissioner (Appeals), rejecting the Order in Original for determining the Export Duty on the basis of the CRCL test report.”*

9.3. This Court is persuaded to believe that the question of law posed in this appeal by the Revenue for adjudication is essentially based on finding of fact and supported by well established principles as was in vogue at the relevant point of time, i.e., position prior to the Finance Act, 2022 came into force. Therefore, there arises no substantial question of law from the order of the



CESTAT on the facts and in the circumstances of the case.

9.4. This Court had an occasion to deal with an identical issue pertaining to acceptance of CRCL test report *vis-a-vis* Certificate of Quality issued by a private institution. In the case of *Commissioner of Customs (Preventive), BBSR Vrs. Kai International Private Limited, (2025) 29 Centax 178 (Ori)*, it was held as follows:

“8. *Moving on for answer to the question, according to him it should be given in the negative and in favour of his client. He relies on view taken by the Bombay High Court in V.M. Salgaocar and Brother Pvt. Ltd. Vrs. Assistant Commissioner of Customs (Export) and others available at 2022 (9) Tax Management India 1306, paragraph-47. He submits, his research reveals the judgment was neither carried to nor otherwise commented on by the Supreme Court. Reproduced below is relied upon passage from the paragraph.*

*“*** Thus, it appears that there was never a confusion in determining the iron content by two different standards, firstly, a standard whereunder by applying the wet (WMT) method the iron content in the iron ore for the purpose of classification of the iron ore for levy of export duty being adopted; and secondly, and analysis of the iron content in the iron ore for the purpose of trade and commerce by applying the dry method, which is recognized for the purposes of trade on the basis of which invoicing would take place between the parties. It is for such*



reason, it is not correct for the Revenue to contend that the dry method which is being used for the purpose of trade and commerce be made applicable for the purpose of determination of its classification for the purposes of levy of export duty on export of raw iron ore in its natural form. Such hypothesis insofar as tariff entries are concerned, appears to be totally unacceptable as recognized by Supreme Court in its decision in Gangadhar Agarwal's case.***'

He submits, when exporters enter goods being iron ore fines for export, the buyer would want to contract to pay for the iron content, in exclusion of impurities and moisture. Thus contracts, under which export of iron ore fines are made and in his client's case, the basis was DMT weight of the goods. **However, the levy of export duty is on WMT basis, again on which there is no dispute.** In the circumstances also, the answer should be in the negative and in favour of his client.

9. We do find that Revenue though had the test report as a document submitted for final assessment, accepted the final assessment made on basis of information obtained from the private test report. **This crystalizes into a position on facts that there was no dispute regarding the private test report inasmuch as, no doubt can be cast on it.** The exporter preferred appeal. Revenue supported the final assessment order. We have been shown that the first appellate authority found from the final assessment order, material relied upon to levy the demand of export duty was, inter alia, the private test report. **It appears, both the Assessing**



Authority as well as the first Appellate Authority proceeded on DMT basis to levy and sustain demand of export duty.

10. *Before the Tribunal, respondent was successful. It is there that revenue contended on the test report from the Kolkata Lab. **There have been submissions made, based on information appearing from the report dated 7th July, 2017 that on drawing of samples as on 31st March, 2017, there is indication the test was conducted in July. If that is not so, there is no indication from the report as to when the test was conducted. All this makes us inclined to accept petitioner's contention that the report is itself doubtful.** We need not delve into said report any further as we have already found there was no doubt raised regarding the private test report. Commissioner of Customs, Vijayawada Vrs. Kimmi Steels Pvt. Ltd., reported in 2019 (368) ELT 92 (Tri.-Hyd) is of no assistance to Revenue, nor is Commissioner of Customs, Mumbai Vrs. Dilip Kumar and Co., reported in 2018 (361) ELT 577 (SC).*
11. *Revenue relies on Circular dated 17th November, 2014. In paragraph-3 it was said that the matter had been examined. In order to bring in uniformity, transparency and consistency in assessment of export of iron ore fines and pellets, it had been decided on procedure, given in the circular. We have looked at the orders made by the assessment authority, first appellate authority and the Tribunal. There is no indication of any controversy regarding application of the circular, as appearing from said orders.*



12. *We accept respondent's contentions upon reliance on Dwijendra Narain Roy Vrs. Joges Chandra De, reported in AIR 1924 Calcutta 600. So far as V.M. Salgaocar and Brother Pvt. Ltd. (supra) is concerned, one of the views taken by the Division Bench of the Bombay High Court says, it is not correct for Revenue to contend that the dry method which is being used for the purpose of trade and commerce be made applicable for purpose of determination of its classifications for the purposes of levy of export duty of raw iron ore in its natural form. Disclosed in the appeal is circular dated 17th February, 2012, paragraph-3 in which is reproduced below:*

'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.'

13. *We answer the question in the negative and in favour of respondent."*

9.5. In yet another case, viz., *Commissioner of Customs (Preventive), Bhubaneswar Vrs. Chamong Tee Exports Private Limited, 2025 (III) ILR-CUT 1 = 2025 SCC OnLine Ori 2932*, it has been observed that:



“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.”**

9.6. Under the aforesaid premise, this Court finds no infirmity in adopting the method by the Appellate Authority as affirmed by the CESTAT for determination of Fe content of the Iron Ore Fines exported under the Shipping Bills under consideration.

10. To comprehend the scope of entertaining an appeal on “substantial question of law” that arises out of an Order of the Tribunal, it may be pertinent to bear in mind the



following propositions laid down in *CIT Vrs. Scindia Steam Navigation Co. Ltd.*, (1961) 42 ITR 589 (SC) = 1961 SCC OnLine SC 118:

“31. The result of the above discussion may thus be summed up:

- (1) When a question is raised before the Tribunal and is dealt with by it, it is clearly one arising out of its order.
- (2) When a question of law is raised before the Tribunal but the Tribunal fails to deal with it, it must be deemed to have been dealt with by it, and is therefore one arising out of its order.
- (3) When a question is not raised before the Tribunal but the Tribunal deals with it, that will also be a question arising out of its order.
- (4) When a question of law is neither raised before the Tribunal nor considered by it, it will not be a question arising out of its order notwithstanding that it may arise on the findings given by it.

32. Stating the position compendiously, it is only a question that has been raised before or decided by the Tribunal that could be held to arise out of its order.”

10.1. To exercise jurisdiction under Section 130 of the Customs Act, 1962, it may be relevant here to quote the statutory provisions as it stands:

“130. Appeal to High Court.—



- (1) *An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal on or after the 1st day of July, 2003 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of customs or to the value of goods for the purposes of assessment), if the High Court is satisfied that the case involves a substantial question of law.*
- (2) *The Principal Commissioner of Customs or Commissioner of Customs or the other party aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this sub-section shall be—*
 - (a) *filed within one hundred and eighty days from the date on which the order appealed against is received by the Principal Commissioner of Customs or Commissioner of Customs or the other party;*
 - (b) *accompanied by a fee of two hundred rupees where such appeal is filed by the other party;*
 - (c) *in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.*
- (2A) *The High Court may admit an appeal after the expiry of the period of one hundred and eighty days referred to in clause (a) of sub-section (2), if it is satisfied that there was sufficient cause for not filing the same within that period.]*
- (3) *Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.*



- (4) *The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:*

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

- (5) *The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.*

- (6) *The High Court may determine any issue which—*

(a) has not been determined by the Appellate Tribunal; or

(b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in sub-section (1).

- (7) *When an appeal has been filed before the High Court, it shall be heard by a bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges.*

- (8) *Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall, then, be heard upon that point only by one or more of the other Judges of the High Court*



and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.

(9) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.”

10.2. It is, thus, manifest that an appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal *qua* the determination of any question having a relation to the rate of duty of customs or to the value of goods for the purposes of assessment, if the Court is satisfied that “the case involves a substantial question of law”.

10.3. In *Commissioner of Customs (Preventive), Bhubaneswar Vrs. Chamong Tee Exports Private Limited, 2025 (III) ILR-CUT 1 = 2025 SCC OnLine Ori 2932*, at paragraph 10 this Court held as follows:

“9. Before we proceed to delve into the aforesaid points, we find it prudent to recapitulate the position of law in pursuit to ascertain the substantial question of law involved in an appeal filed before this Court. We are conscious that a mere question of law may not necessarily be a substantial question of law, and, therefore, it is ardent duty of the High Court to ascertain the same and admit the appeal upon formulation thereof. The expression “substantial question of law” has not been defined in the said act



or in any other statute containing such expression. The prefix of the words “substantial” before the expression “question of law” must be of such character having bearing on a substance having essential, real and nexus to the issues involved therein, in contradiction with the technical, inconsequential issues or merely on academic.

10. *In pursuit of determining the question to come within the ambit of substantial question of law, the point must be debatable or there is possibility of taking a different decision or the opinion and above all where the Court feels that the said point or the question may invite the alternative views to be taken. The point which is settled by a catena of decisions of the coordinate Bench or of a higher Court cannot come within the folds of substantial question of law. The proper test for determining whether the question of law raised in a case can be regarded as a substantial question of law is highlighted in a judgment of the apex Court in Santosh Hazari Vrs. Purushottam Tiwari (Dead) By LRs, reported in (2001) 3 SCC 179 in the following paragraphs:*

‘14. A point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law. To be substantial, a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, in so far as the rights of the parties before it are concerned. To be a question of law involving in the case there must be first a foundation for it laid in the pleadings



and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case, or not; the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis.

15. *A perusal of the judgment of the trial Court shows that it has extensively dealt with the oral and documentary evidence adduced by the parties for deciding the issues on which the parties went to trial. It also found that in support of his plea of adverse possession on the disputed land, the defendant did not produce any documentary evidence while the oral evidence adduced by the defendant was conflicting in nature and hence unworthy of reliance. The first appellate Court has, in a very cryptic manner, reversed the finding on question of possession and dispossession as alleged by the plaintiff as also on the question of adverse possession as pleaded by the defendant. The appellate Court has jurisdiction to reverse or affirm the findings of the trial Court. First appeal is a valuable right of the*



*parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate Court must, therefore, reflect its conscious application of mind, and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate Court. The task of an appellate Court affirming the findings of the trial Court is an easier one. The appellate Court agreeing with the view of the trial Court need not restate the effect of the evidence or reiterate the reasons given by the trial Court; expression of general agreement with reasons given by the Court, decision of which is under appeal, would ordinarily suffice (See *Girijanandini Devi & Ors. Vrs. Bijendra Narain Choudhary*, AIR 1967 SC 1124). We would, however, like to sound a note of caution. Expression of general agreement with the findings recorded in the judgment under appeal should not be a device or camouflage adopted by the appellate Court for shirking the duty cast on it.*

*While writing a judgment of reversal the appellate Court must remain conscious of **two principles**.*

Firstly, *the findings of fact based on conflicting evidence arrived at by the trial Court must weigh with the appellate Court, more so when the findings are based on oral evidence recorded by the same presiding*



Judge who authors the judgment. This certainly does not mean that when an appeal lies on facts, the appellate Court is not competent to reverse a finding of fact arrived at by the trial Judge. **As a matter of law if the appraisal of the evidence by the trial Court suffers from a material irregularity or is based on inadmissible evidence or on conjectures and surmises, the appellate Court is entitled to interfere with the finding of fact** (See *Madhusudan Das Vrs. Smt. Narayani Bai & Ors.*, AIR 1983 SC 114). The rule is— and it is nothing more than a rule of practice— that when there is conflict of oral evidence of the parties on any matter in issue and the decision hinges upon the credibility of witnesses, then unless there is some special feature about the evidence of a particular witness which has escaped the trial Judges notice or there is a sufficient balance of improbability to displace his opinion as to where the credibility lies, the appellate Court should not interfere with the finding of the trial Judge on a question of fact. (See *Sarju Pershad Ramdeo Sahu Vrs. Jwaleshwari Pratap Narain Singh & Ors.*, AIR 1951 SC 120).



Secondly, while reversing a finding of fact the appellate Court must come into close quarters with the reasoning assigned by the trial Court and then assign its own reasons for arriving at a different finding. This would satisfy the Court hearing a further appeal that the first appellate Court had discharged the duty expected of it.

We need only remind the first appellate Courts of the additional obligation cast on them by the scheme of the present Section 100 substituted in the Code. The first appellate Court continues, as before, to be a final Court of facts; pure findings of fact remain immune from challenge before the High Court in second appeal. **Now the first appellate Court is also a final Court of law in the sense that its decision on a question of law even if erroneous may not be vulnerable before the High Court in second appeal because the jurisdiction of the High Court has now ceased to be available to correct the errors of law or the erroneous findings of the first appellate Court even on questions of law unless such question of law be a substantial one.**”

10.4. The Hon'ble Supreme Court of India in the case of *Hero Vinoth (Minor) Vrs. Seshammal*, (2006) 5 SCC 545, observed as follows:



“18. It has been noted time and again that without insisting for the statement of such a substantial question of law in the memorandum of appeal and formulating the same at the time of admission, the High Courts have been issuing notices and generally deciding the second appeals without adhering to the procedure prescribed under Section 100 CPC. It has further been found in a number of cases that no efforts are made to distinguish between a question of law and a substantial question of law. In exercise of the powers under this section in several cases, the findings of fact of the first appellate court are found to have been disturbed. It has to be kept in mind that the right of appeal is neither a natural nor an inherent right attached to the litigation. Being a substantive statutory right, it has to be regulated in accordance with law in force at the relevant time. The conditions mentioned in the section must be strictly fulfilled before a second appeal can be maintained and no court has the power to add or to enlarge those grounds. The second appeal cannot be decided on merely equitable grounds. The concurrent findings of facts will not be disturbed by the High Court in exercise of the powers under this section. **Further, a substantial question of law has to be distinguished from a substantial question of fact.** This Court in *Sir Chunilal V. Mehta and Sons Ltd. Vrs. Century Spg. & Mfg. Co. Ltd.*, 1962 Supp (3) SCR 549 held that:

‘The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of



the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law.'

19. *It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. It is true that the lower appellate court should not ordinarily reject witnesses accepted by the trial court in respect of credibility but even where it has rejected the witnesses accepted by the trial court, the same is no ground for interference in second appeal when it is found that the appellate court has given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences of fact are possible, the one drawn by the lower appellate court will not be interfered by the High Court in second appeal. Adopting any other approach is not permissible. The High Court will, however, interfere where it is found that the conclusions drawn by the lower appellate court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at by ignoring material evidence.*



20. ***The question of law raised will not be considered as a substantial question of law, if it stands already decided by a larger Bench of the High Court concerned or by the Privy Council or by the Federal Court or by the Supreme Court. Where the facts required for a point of law have not been pleaded, a litigant should not be allowed to raise that question as a substantial question of law in second appeal. The mere appreciation of facts, the documentary evidence or the meaning of entries and the contents of the documents cannot be held to be raising a substantial question of law. But where it is found that the first appellate court has assumed jurisdiction which did not vest in it, the same can be adjudicated in the second appeal, treating it as a substantial question of law. Where the first appellate court is shown to have exercised its discretion in a judicial manner, it cannot be termed to be an error either of law or of procedure requiring interference in second appeal. This Court in Reserve Bank of India Vrs. Ramkrishna Govind Morey, (1976) 1 SCC 803 held that whether the trial court should not have exercised its jurisdiction differently is not a question of law justifying interference. (See Kondiba Dagadu Kadam Vrs. Savitribai Sopan Gujar, (1999) 3 SCC 722.)***
21. *The phrase “substantial question of law”, as occurring in the amended Section 100 CPC is not defined in the Code. The word substantial, as qualifying “question of law”, means— of having substance, essential, real, of sound worth, important*



or considerable. It is to be understood as something in contradistinction with— technical, of no substance or consequence, or academic merely. However, it is clear that the legislature has chosen not to qualify the scope of “substantial question of law” by suffixing the words “of general importance” as has been done in many other provisions such as Section 109 of the Code or Article 133(1)(a) of the Constitution. The substantial question of law on which a second appeal shall be heard need not necessarily be a substantial question of law of general importance. In Guran Ditta Vrs. Ram Ditta, (1927-28) 55 IA 235 = AIR 1928 PC 172 the phrase “substantial question of law” as it was employed in the last clause of the then existing Section 100 CPC (since omitted by the Amendment Act, 1973) came up for consideration and their Lordships held that it did not mean a substantial question of general importance but a substantial question of law which was involved in the case. In Sir Chunilal case, 1962 Supp (3) SCR 549 = AIR 1962 SC 1314 the Constitution Bench expressed agreement with the following view taken by a Full Bench of the Madras High Court in Rimmalapudi Subba Rao Vrs. Noony Veeraju, AIR 1951 Mad 969 = (1951) 2 MLJ 222 (FB): (Sir Chunilal case, 1962 Supp (3) SCR 549 = AIR 1962 SC 1314, SCR p. 557)

‘[W]hen a question of law is fairly arguable, where there is room for difference of opinion on it or where the Court thought it necessary to deal with that question at some length and discuss alternative views, then the question would be a substantial question of law. On the other hand if the question was practically



covered by the decision of the highest court or if the general principles to be applied in determining the question are well settled and the only question was of applying those principles to the particular fact of the case it would not be a substantial question of law.'

This Court laid down the following test as proper test, for determining whether a question of law raised in the case is substantial: (Sir Chunilal case, 1962 Supp (3) SCR 549 = AIR 1962 SC 1314, SCR pp. 557-58)

'The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law.'

22. *In Dy. Commissioner Vrs. Rama Krishna Narain, (1953) 2 SCC 319 = 1954 SCR 506 = AIR 1953 SC 521 also it was held that a question of law of importance to the parties was a substantial question of law entitling the appellant to a certificate under (the then) Section 100 CPC.*



23. **To be “substantial” a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law “involving in the case” there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case.** An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case or not, the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis. (See Santosh Hazari Vrs. Purushottam Tiwari, (2001) 3 SCC 179.)
24. The **principles** relating to Section 100 CPC relevant for this case may be **summarised** thus:
- (i) An inference of fact from the recitals or contents of a document is a question of fact. But the legal effect of the terms of a document is a question of law. Construction of a document involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a



document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

- (ii) *The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.*
- (iii) *The general rule is that High Court will not interfere with the concurrent findings of the courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where—*
- (i) *the courts below have ignored material evidence or acted on no evidence;*



- (ii) *the courts have drawn wrong inferences from proved facts by applying the law erroneously; or*
- (iii) *the courts have wrongly cast the burden of proof.*

When we refer to “decision based on no evidence”, it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.”

10.5. In *Shrimanth Balasaheb Patil Vrs. Speaker, Karnataka Legislative Assembly (2020) 2 SCC 595*, it was held as under:

“157. There is no doubt that the requirements under Article 145(3) of the Constitution have never been dealt with extensively and, more often than not, have received mere lip service, wherein this Court has found existence of case laws which have already dealt with the proposition involved, and have rejected such references. Normatively, this trend requires consideration in appropriate cases, to ensure that unmeritorious references do not unnecessarily consume precious judicial time in the Supreme Court.

158. In any case, we feel that there is a requirement to provide a preliminary analysis with respect to the interpretation of this provision. In this context, we need to keep in mind two important phrases occurring in Article 145(3) of the Constitution, which are, “substantial question of law” and “interpretation of the Constitution”. By reading the



aforesaid provision, two conditions can be culled out before a reference is made:

- (i) The Court is satisfied that the case involves a substantial question of law as to the interpretation of this Constitution;*
- (ii) The determination of which is necessary for the disposal of the case.*

160. Any question of law of general importance arising incidentally, or any ancillary question of law having no significance to the final outcome, cannot be considered as a substantial question of law. The existence of substantial question of law does not weigh on the stakes involved in the case, rather, it depends on the impact the question of law will have on the final determination. If the questions having a determining effect on the final outcome have already been decided by a conclusive authority, then such questions cannot be called as “substantial questions of law”. In any case, no substantial question of law exists in the present matter, which needs reference to a larger Bench. The cardinal need is to achieve a judicial balance between the crucial obligation to render justice and the compelling necessity of avoiding prolongation of any lis.”

10.6. This Court does not perceive the questions of law posed by the Revenue, as extracted herein above, fall within the connotation of expression “the case involves a substantial question of law”.

Conclusion:



11. It is, thus, abundantly clear from bare reading of provisions of Section 130 of the Customs Act that the appellate jurisdiction of this Court can be invoked on limited contours. This Court does not find any infirmity in the view expressed by the learned CESTAT in adhering to the method of determination of Fe content of the Iron Ore Fines exported based of WMT by accepting the report of SKM, an NABL Accredited Laboratory.

11.1. The questions of law which are posed by the Revenue are basically based on the factual details. The determination of customs duty liability in respect of export of Iron Ore Fines, percentage of Fe content of which was calculated based on WMT as certified by SKM, does not call for determination of the question as “substantial” on the facts and in the circumstances of the case. The finding of the fact returned by the Appellate Authority is affirmed by the learned CESTAT and such finding of fact is based on appreciation of evidence on record and adaptation of consistent approach of the learned CESTAT rendered earlier in different cases. Hence, this Court desists from re-appreciating the evidence, which in its considered opinion is impermissible.

11.2. This Court does not find any perversity in the concurrent finding of fact rendered by the learned CESTAT affirming the view expressed by the Appellate Authority.



12. On the conspectus of aforesaid discussion and legal position as set forth by Courts, this Court finds no “question of law” much less any “substantial question of law” that arises for consideration. *Ergo*, the appeal preferred by the Revenue under Section 130 of the Customs Act, 1962, being devoid of merit, is liable to be dismissed.

12.1. Hence, this appeal, bearing OTAPL No.50 of 2025, is dismissed without disturbing the concurrent findings of fact returned by the Appellate Authority as affirmed in Order dated 04.12.2024 passed by the learned Customs, Excise and Service Tax Appellate Tribunal, Eastern Zonal Bench, Kolkata.

12.2. As a result of disposal of the appeal, pending Interlocutory Application(s), if any, shall stand disposed of.

12.3. In the circumstances there shall be no order as to costs.

I agree.

(HARISH TANDON)
CHIEF JUSTICE

(MURAHARI SRI RAMAN)
JUDGE