CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH - COURT NO. – I

Customs Appeal No. 20970 of 2015

(Arising out of **Order-in-Appeal** No. 117 & 118/2014 - VCH dated 16.09.2014 passed by Commissioner of Customs, Central Excise and Service Tax (Appeals), Visakhapatnam)

M/s Feegrade And Co Pvt Ltd., .. **APPELLANT**
Rungta House, Chaibasa Po,
Jharkhand – 833 201.

VERSUS

Commissioner Of Customs .. **RESPONDENT**
Visakhapatnam - Customs
4th Floor, Customs House,
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

WITH

Customs Appeal No. 20601 of 2015

(Arising out of **Order-in-Appeal** No. 180/2014 - 15 - VCH dated 19.01.2015 passed by Commissioner of Customs, Central Excise and Service Tax (Appeals), Visakhapatnam)

M/s Feegrade And Co Pvt Ltd., .. **APPELLANT**
Rungta House, Chaibasa Po,
Jharkhand – 833 201.

VERSUS

Commissioner Of Customs .. **RESPONDENT**
Visakhapatnam - Customs
4th Floor, Customs House,
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

WITH

Customs Appeal No. 20602 of 2015

(Arising out of **Order-in-Appeal** No. 181/2014 – 15- VCH dated 19.01.2015 passed by Commissioner of Customs, Central Excise and Service Tax (Appeals), Visakhapatnam)

M/s Feegrade And Co Pvt Ltd., .. **APPELLANT**
Rungta House, Chaibasa Po,
Jharkhand – 833 201.

VERSUS

Commissioner Of Customs .. **RESPONDENT**
Visakhapatnam - Customs
4th Floor, Customs House,
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

AND

Customs Appeal No. 20603 of 2015

(Arising out of **Order-in-Appeal** No. 182/2014 – 15 - VCH dated 19.01.2015 passed by Commissioner of Customs, Central Excise and Service Tax (Appeals), Visakhapatnam)

M/s Feegrade And Co Pvt Ltd., .. **APPELLANT**

Rungta House, Chaibasa Po,
Jharkhand – 833 201.

VERSUS

Commissioner Of Customs .. RESPONDENT
Visakhapatnam - Customs
4th Floor, Customs House,
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

APPEARANCE:
Shri S.C. Choudhury, Advocate for the Appellants.
Shri K. Sreenivasa Reddy, Authorised Representative for the Respondent.

CORAM: HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30427-30430/2025

Date of Hearing:03.07.2025
Date of Decision:17.10.2025

[ORDER PER: A.K. JYOTISHI]

M/s Feegrade And Co Private Limited (hearinafter referred to as Appellant) are in appeal against the Order-In-Appeal No. 117 & 118/2014 dated 16.09.2014, 180-182/2014-15 dated 19.01.2015 (impugned order).

2. The issue, in brief, is that the appellant had entered into contract with foreign buyers for supply of Iron Ore of certain specifications, where the final price was payable depending on the actual quantity received, quality, actual Fe percentage determined as per CIQ report at the discharge Port, in terms of mutually agreed terms and conditions. The final payment was based on final commercial invoice to be issued by the appellant in terms of finally determined quality, quantity etc., in accordance with the contract. The Department, at the time of export, kept the assessment provisional based on provisional invoice furnished by the appellant as also for the purpose of testing certain para-meters like moisture content and Fe percentage. For the purpose of provisional assessment, necessary bond and security as directed by the Department was also executed by the appellant. Subsequently, based on the test report of CIQ at the discharge port and on receipt of final

payment based on final commercial invoice issue by the appellant to the foreign buyers, the appellant approached the Department for finalization of their provisional assessment.

3. The Department, in general, calculated the net quantity of export taking into account the moisture content, as determined by their lab i.e. CRCL, based on sample taken at the time of export and thereafter proceeded to examine the final invoice and proof of receipt of payment in the form of Bank Realisation Certificate (BRC). While re-determining the value, they did not dispute the rate per Metric Tonne of ore, as declared, at the time of export but re-computed the total export quantity itself keeping in view the moisture content determined by the CRCL, which was lower than the declared moisture content at the time of export or even lower to moisture content shown in the CIQ report at discharge Port. Since, the appellant had paid duty provisionally and also deposited certain additional amount as directed by the Department based on provisional invoice at the time of provisional assessment, they approached for refund of excess payment in terms of the statutory provisions. Based on their assessment, Department re-worked out the total duty payable and amount already paid to compute the amount of refund admissible. It is the grievance of the appellant that the said refund amount has been wrongly computed in as much as while re-computing the same, they had not taken note of the fact that there was no occasion for the department to doubt the transaction value in the first place or BRC and therefore BRC value or realised value for the consignment should have been taken as the basis for deciding the final duty payable and it was not open to them to re-compute the entire duty liability in the manner in which they have re-computed the refund amount by re-determining the

quantity of export leading to grant of lesser refund than what they are otherwise eligible for.

4. Learned Counsel for the appellant has mainly submitted that it is not disputed that the entire consignment has been exported in terms of contract between the appellant and the importer abroad. It is also not disputed that they have realised only the sum as reflected in their final invoices as well as BRC from their buyer, who is not a related person. It is also not disputed that the transaction value declared by them in terms of per Metric Tonne of ore at the time of export has been found correct or not acceptable to the Department. Therefore, when there was no reason to doubt the transaction value, the Department could not have again re-computed the value for the purpose of computing customs duty payable by resorting to Rule 4 and 5 of Export Valuation Rules. It was already pointed out that no grounds were adduced or any opportunity given before re-computation clarifying as to what was the ground on which the transaction value was not found admissible. He further submits that the variation in quantity due to moisture content is of no consequence post 10.10.2007, as old Section 14 covering the valuation of goods for import and export has been rescinded with a new concept of transaction value, wherein, there is a specific provision as to under what circumstances, a transaction value can be rejected and the value for the purpose of payment of customs duty could be re-computed and in what manner. One of the major criteria is to explain the reasons as to the ground for doubting the declared transaction value, as also the rationale and basis for adopting a particular method under Rule 4 or 5 for re-computing the value. Further, when duty is payable on advalorem basis, re-determination of quantity is not required and the final value received towards the consignment from buyer has to be taken as the transaction

value. He has also relied on many case laws, including in their own case, decided by this Bench. He is relying on the case of VGM Exports vide Final Order No. A/30317-30324/2024 dated 06.05.2024. He is further submitting that during the export, they had deposited 20% of duty, as additional revenue deposited, to cover any excess duty payment that may become payable on account of finalisation of assessment and since it was a provisional assessment, such deposits were not in the nature of duty and only a revenue deposit and in view of the same, they are also entitled to get interest. He has relied on certain case laws viz - Indore Treasure Market City Pvt. Ltd., VS Commissioner of CGST and Central Excise, Indore vide Final Order No. 50125 of 2024 dated 11.01.2024 [2024 (24) Centax 469 (Tri-Bang)] and Parle Agro Pvt Ltd., Vs Commissioner, CGST, Noida [2022 (380) ELT 219 (Tri-All)] as also the Co-ordinate Bench decision in appeal no. C/75029/2020 vide Final Order No. 76970/2024 dated 09.09.2024.

5. Learned AR on the other hand has mainly submitted that the Adjudicating Authority has rightly accepted the CRCL report for the purpose of determining moisture content in the exported goods and accordingly re-computed the value of the consignment.

6. Heard both the sides and perused the records.

7. Since in all these appeals, the issues are more or less similar and impugned Order-in-Originals and Order-in-Appeals have also analysed and decided the matter more or less on similar lines and also the terms of contract being more or less similar, we proceed to decide all these appeals by way of common order.

8. However, before we proceed, some of the admitted factual positions in these appeals, which has not been disputed, need to be highlighted. The

transaction value per Metric Tonne, as declared at the time of export, has not been doubted by Department. It is a case of provisional assessment where provisional duty and certain additional amount was paid at the time of export on provisional basis. There is some dispute as regards the coverage and liability on account of execution of bond, wherein the Department feels that it was incumbent upon appellant to accept the CRCL moisture report in terms of said bond, whereas, the appellant's submission is that the bond was only binding on them to pay the differential duty, if any, after finalisation of provisional assessment, and that the CRCL test report in respect of moisture content was relevant only to the extent to determine the Fe content, as more than 64% Fe content would have covered the consignment under the restricted category, as iron ore above 64% Fe content was a canalised item. Therefore, there is no binding on them in terms of said bond to accept moisture content as determined by CRCL for the purpose of re-determining the quantity of goods exported.

9. We have perused the relevant contracts covering the exports under different Shipping Bills, where same standard terms and conditions regarding quality, price adjustment for Fe content, bonus / penalty for impurities, payment methods, method of sampling and analyse etc., have been agreed upon. It also, interalia, provides that the weight as determined by the CIQ shall be final and clause 9(a), para 3 of contract further provides that CIQ analysis (for moisture and composition) shall be final. Therefore, what is to be understood that while the price declared at the time export was provisional and was dependent on the mutually agreed terms and conditions between the exporter / appellant and the importer in foreign country after it's analysis at the time of unloading at discharge Port by designated agency (CIQ). We find that Commissioner (Appeals) has gone

through each of the parameters declared by the appellant provisionally and the ones adopted by the Adjudicating Authority for computing the total duty payable at the time of finalisation of Shipping Bills. The same is reproduced below for ease of reference:

Appeal No	O-I-O No.	Date	Unit price Declared in PDMT CFR	Unit price adopted for finalization in PDMT CFR	Declared	Load Port Analysis Certificate	Chemical Lab reported moisture %	CIQ Certified Reported	Final Invoice Reported	Refund sanctioned (Rs.)	Duty demanded along with interest (Rs.)	Document Relied upon to finalize
					Fe %	Fe %	Fe%	Fe%	Fe %			Fe %
					moisture %	moisture %	moisture %		moisture %			Unit Price
												Quantity
												Moisture %
252/2012 -VCH	748	15.10.2012	180	180	63.5	------	63.3	63.48	----	1,54,226	--------	Initially declared
												Initially declared %
												Final Invoice
					8	----	4.1	----	9.36			BL Quantity
												Customs Lab Report

Further, in order to understand the method of computing the duty payable by the Department, we have also gone through the calculation sheet adopted by the Refund Sanctioning Authority for deciding the refund amount on conclusion of finalisation of Bill of Entry. We have taken up Order-in-Original No. 748/2012 dated 15.10.2012, which is the subject matter of Order-in-Appeal No. 181/2014 and covered in appeal no. C/20602/2015 as a reference case. The computation is indicated below for ease of reference:

ANNEXURE - A

FINAL WORKING SHEET

S.B.NO.2908 dated 15.7.2011

FE CONTENT DECLARED - 63.5%

1	GROSS QUANTITY	MTs	9000	
2	MOISTURE DECLARED	%	8.00	
3	NET WEIGHT	MTs	8280	
4	UNIT PRICE PER MT CFR	USD	180.00	
5	INVOICE VALUE	USD	1490400	
6	FREIGHT ($ 19.75)	USD	163530	
7	TOTAL FOB VALUE	USD	1326870	
8	EXCHANGE RATE	Rs	44.7	
9	FOB VALUE	Rs	5831[illegible]08	
10	20% DUTY PAID ON FOB VALUE	Rs	[illegible]86221	
11	DUTY + CESS PAID	Rs	[illegible]871218	
12	MOISTURE RD PAID	Rs.	724140	
13	DIFF. DUTY RD PAID	Rs.	0	
14	INTEREST ON DUTY	Rs.	0	
15	TOTAL DUTY + CESS + RD PAID	Rs.	12595358	
	ACTUAL SHIPMENT PARTICULARS			LAB FE =63.3%
				Discharge port FE = 63.48%
16	GROSS QTY AS PER FINAL INVOICE	MTs	BL Qty→ 9000	→ 8973
17	MOISTURE DETERMINED	%	Lab matter→ 4.10	→ CRCL→ 9.36% AS PER VCH LAB REPORT
18	NET WEIGHT	MTs	863[illegible]	→ 8133.13
19	UNIT PRICE FOB CFR	USD	180.00	→ 180
20	INVOICE PRICE	USD	1563580	→ 1463963.40
21	BONUS	USD	[illegible]	→ Penalty (461.08)
22	TOTAL INVOICE VALUE	USD	[illegible]0	→ 1463502.32
23	FREIGHT AS PER BRC	USD	[illegible]2961	→ 162961.20
24	TOTAL FOB VALUE	USD	[illegible]9	→ 1300541.12
25	EXCHANGE RATE	Rs	[illegible]0	→ 44.70
26	TOTAL FOB VALUE	Rs	6216[illegible]660	→ 58134188.06
27	20% DUTY PAID ON FOB VALUE	Rs	124[illegible]2132	→ 11626837.61
28	DUTY + CESS PAYABLE	Rs.	12441132	→ 11635810.61
29	DUTY+CESS+RD ALREADY PAID	Rs	12595358	→ 12595358
30	EXCESS COLLECTION	Rs.	154225.73	→ 959547.39

Final Qty

Diff = 959547.39 - 154226

= 805321.39

From the perusal of the above, it is obvious that there is not much dispute regarding the Fe content of iron ore fines, as declared or as found in terms of CRCL report or for that matter in terms of final invoice, as thus treated as

within the tolerance. The Department has also not contested the slight variation in percentage of Fe content as determined by CIQ. They have also not disputed unit price per Metric Tonne as declared at the time of export in the final invoice, being same. The Adjudicating Authority has, however, taken for the purpose of computation, the moisture content as determined by the CRCL and has ignored the moisture content as per CIQ report. There is no dispute in so far as unit price, however, the dispute is on account of the net weight i.e 8631 MT arrived at by the Adjudicating Authority as per moisture content declared by the CRCL i.e 4.10% whereas, the net quantity in terms of contract has been decided as 8133.13 MT taking into account the CIQ's determination of moisture 9.36%. Therefore, it is apparent that based on this method of computation, the Department arrived at a higher FOB value, as compared to lower FOB value which was taken by the appellant for the purpose of raising final commercial invoice as per terms and conditions of contract and as a consequence, the excess payment computed was determined by the Adjudicating Authority as only Rs. 1,54,226/- whereas, as per the appellant it should have been Rs. 9,59,547.39 and therefore they have been deprived of refund of Rs. 8,05,321.39/-.

10. We find that essentially it is a case where the contract for supply of iron ore has certain parameters as regards Fe content, moisture content etc., and has also prescribed certain tolerance for the same. It has also prescribed for certain bonus and penalty in the event of those parameters being met or not met. It has also provided for payment, both provisional and final, and basis for arriving at the final price. Therefore, it is obvious that once there is a contract, which is dependent on determination of the net quantity and certain quality parameters in a manner understood to both exporter and importer, the final invoice has to be raised in accordance with

the agreed upon terms and conditions and accordingly a final invoice has been raised in this case also and the payments have been received to that extent only as evidenced by the BRC, which is a document which indicates the realisation in terms of particular export consignment under the cover of a particular shipping bill(s). This document, per se, has not been doubted. We also note that in any case, the re-computation of the quantity has got no meaning when the duty itself is on advalorem basis and therefore what is important is to see whether there was any ground for doubting the declared transaction value in the first place or otherwise. In this case, no grounds were existing at the time of declaration, as obviously neither Department nor the appellant were sure about what would be the final price in terms of the negotiated, mutually agreed contract covering the said consignment. It was at the time of finalisation of provisional assessment, when the final invoice and the BRC were submitted to the Department, they could have raised any objection as regards non-acceptance of the said transaction value or BRC and thereafter they could have proceeded as provided under the Export Valuation Rules following certain prescribed procedure and thereafter could have adopted the value of either identical goods or similar goods. We find that no such activities have been undertaken and finalisation is based & relied on re-computation of quantity based on the moisture content as determined by the CRCL. We find much force in the submissions of the appellant that in terms of contract, the quantity has to be determined in terms of the moisture content adopted by the importer in terms of CIQ. Moreover, we also find that when the export duty is leviable on ad valorem basis, the re-computation of the quantity based on the moisture content has no meaning, as has been held in their own case in the Appeal No. 25373/2013 by this Bench. We have perused the judgment passed by the Hyderabad Bench in the bunch of appeals, vide Final Order No. A/30317-

30324/2024 dated 21.06.2024, wherein, interalia, all these issues were deliberated upon and it was, interalia, held that irrespective of the quantity of ore exported, as the export duty is on ad valorem basis, the value for export duty has to be taken as per transaction value only. It was held that in all such cases, transaction value has been followed by the appellant including present appellant. The relevant paras are cited below:

> 11. Therefore, in all these cases, the contracts are clearly specifying these parameters. From the documentary evidence provided by way of invoices, it is seen that based on the moisture content arrived at by CIQ, the appellant has reduced the quantity and arrived at the DMT quantity. There is no dispute that the appellant has realised only the value shown in the total value shown in the invoices. Therefore, it is clear that the transaction value has been followed by the appellant. This also meets the requirement as specified in the Circular No. 12/2014 dated 17.11.2014. Hence on this count the Appeal stands allowed.
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> 12. Another point to be considered is that in this case the Export duty is on advalorem basis, which is dependent on the value of the consignment exported. Irrespective of the quantity of DMT exported, the fact remains that the appellant has received the export proceeds only for the net quantity shown in their Invoices. Hence, the value for Export Duty has to be taken as per Transaction Value only. Admittedly, as per the Para 11 of the Order-in-Original, the transaction value is not doubted. Hence, even on considering this fact, the impugned order cannot be sustained.

11. We, therefore, find that the issue of modifying or re-determining the quantity in final invoice based on moisture content as per CIQ report, has been followed consistently, especially when the amount received is in accordance with the said quantity in terms of the contract. We also note that great deal of emphasis has been placed on Bond executed by the appellant at the time of provisional assessment. We find that the bond is primarily for binding exporter to pay the differential duty, if any, on final assessment of duty and not for accepting moisture content of CRCL. Therefore, bond and any additional security provided by exporter is essentially for binding him to ultimately pay the amount finally determined but it cannot be construed that it binds exporter irrevocably to accept even the parameters like moisture content as determined by CRCL having bearing on quality and quantity etc.,

which is contrary to mutually agreed contract unless specifically covered in the said bond in explicit manner. If that is the case, everything could have been determined at the time of export itself based on parameters determined by CRCL itself and therefore there would not have been any reason to resort to provisional assessment. We feel that at most, the bond could have covered Fe Content determination and if found above 64% it would have made the said export restricted and liable to certain final action. That is not the case here. We have also perused the judgment relied upon by Learned AR, M/s Aban Loyd Chiles Offshore Ltd., Vs Union of India [2008 (227) ELT 24 (SC)] and Reliance Cellulose Products Ltd., [1997 (93) ELT 646 (SC)]. The context and facts analysed and observations made are not relevant to facts of the case as in the present appeal, there is a contract which regulates the final price, hence full effect has to be given to that contract. Therefore, the facts are distinguished. We find that in the present appeals facts are more or less similar to earlier decided matter in their own case and therefore following the ratio laid down in their own case, we find that the order of the Commissioner (Appeals) upholding the order of the Adjudicating Authority is not legally tenable and therefore liable to be set aside.

12. The appellants have also requested that since they had deposited 20% of the duty based on the declared value, as additional revenue deposit, to cover any excess duty at the time of provisional assessment and therefore, said deposits are in the nature of revenue deposits and therefore in the event of not getting adjusted against the final payment of duty, the same is required to be refunded along with interest, relying on certain judgements cited, supra. We find that Section 18 of the Customs Act regulates the entire gamut of provisional assessment of duty, including requirement to pay the

additional duty, in case finally assessed duty is higher than the amount deposited or return the amount by way of refund, in case it held to be more than duty finally assessed. Essentially, the provision is that when an assessment is done provisionally in terms of Section 18, the exporter is required to furnish certain security, as the proper Officer may deem fit, for the payment of deficiency, if any, between the duty as may be finally assessed or re-assessed as the case may be and the duty provisionally assessed. Thereafter, when the duty leviable on such goods is assessed finally, then the amount paid towards the deficiency between the duty provisionally assessed and finally assessed is required to be adjusted against the duty finally assessed first and thereafter, if some amount of duty is still required to be recovered then the exporter is required to pay by adjusting the amount already paid, whereas, if the amount paid is in excess of duty finally assessed, then the said amount will be refunded. Further, Section 18(4) provides, subject to sub-section 5, that if any refundable amount referred to in clause (a) of sub-section 2 of Section 18 is not refunded under that sub-section within three months from the date of final assessment of duty finally, they shall be paid interest on such un-refunded amount at such rate fixed by the Central Government under Section 27(1) till the date of refund of such amount. Therefore, the harmonious reading of the provisions under Section 18 would indicate that it is a comprehensive provision to regulate as to how provisional assessments are to be regulated. Therefore, whatever amount is paid as an additional deposit or security at the time of provisional assessment are in the nature of security or revenue deposit, which is required to be adjusted or appreciated towards duty in case any deficiency is noted between the duty paid at the time of provisional assessment and duty finally assessed. Therefore, it is not in the nature of duty, per se. Further, this amount has not been referred to as duty in

Section 18 of the Customs Act itself and it has been referred to as an "amount" and the refund is also required to be made in respect of the said amount and that to within three months from the date of finalisation of the provisional assessment. Therefore, in a situation, where, on finalisation of provisional assessment excess payment do not get fully adjusted towards duty payable and there being excess would be entitled to be refunded in terms of Section 18(4) and would also be entitled for interest, as prescribed in this regard, beyond three months from the date of finalisation of provisional assessment. Thus, interest is also regulated by the Section 18(4) and there is no need to provide any other method for determination of interest amount. We also find force in the judgments cited by Learned Advocate in support of entitlement of interest in respect of such excess payment.

13. Therefore, having regard to the various citations, as well as statutory provision, we find that the amount of customs duty finally payable has to be computed by the Refund Sanctioning Authority, based on the value/price received by the appellant in terms of final commercial price and BRC and thereafter, excess payments of any amount, if any, made by them has to be computed and refunded along with applicable interest in accordance with the provisions under Section 18(4) of Customs Act 1962. Further, this being an old matter, the exercise to re-compute and grant of refund and interest thereon in accordance with law has to be concluded within a period of two months by the Department subject to appellant providing the relevant documents. The matter is remanded back only for the re-quantification of refund and applicable interest in view of observations made in earlier paragraphs.

14. Appeals are allowed by way remand with consequential reliefs, as per law.

(Pronounced in open court on 17.10.2025)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

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