(2010) 08 AP CK 0017

In the Andhra Pradesh High Court

Case No : Central Excise Appeal No. 51 of 2009

The Commissioner of Central Excise APPELLANT

Vs

Kineta Minerals and Metals Ltd. RESPONDENT

Date of Decision : 27-08-2010

Acts Referred:
Customs Act, 1962 — Section 16, 50, 51

Citation : (2011) 269 ELT 494

Hon'ble Judges : R. Kantha Rao, J;B. Prakash Rao, J

Bench : Division Bench

Advocate : Bathula Raj Kiran, for the Appellant; Lakshmi Kumaran and Shridharan, for the Respondent

Final Decision : Dismissed

Judgement

R. Kantha Rao, J.—This appeal is filed by the Commissioner of Central Excise, Guntur against the final order No. 68/2009, dated 30.01.2009 passed in Appeal No. Customs/269/2008 on the file of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore.

2. The Respondents M/s Kineta Minerals and Metals Ltd., Jubilee Hills, Hyderabad were engaged in the business of export of iron ore. They filed two shipping bills Nos. 041 dated 12.02.2007 and 044 dated 22.02.2007 for the purpose of export of 55,000 metric tonnes and 44,000 metric tonnes of iron ore respectively through Krishnapatnam Port falling under the jurisdiction of Nellore Central Excise and Customs Division. The Appellants passed the aforesaid shipping bills on 14.02.2007 and 26.02.2007. The Respondents also paid the export cess at the time of processing shipping bills and the Cargo was loaded for shipment. However, in respect of shipping bill No. 41, dated 14.02.2007 out of 55,000 metric tones, 22000 metric tones of iron ore were allowed under boat notes which was loaded into the vessel up to the midnight of 28.02.2007. Similarly, in respect of shipping Bill No. 044, dated 26.02.2007 out of 44000 metric tones, 9400 metric tones intended for export were allowed for clearance in the boat

notes which was loaded into the vessel up to the midnight of 28.02.2007. On the aforementioned remaining quantity of the iron ore customs and export duty @ 300 per metric tonne was imposed as per Clause 105(ii) r/w Third Schedule of the Finance Bill, 2007 which had come into force with immediate effect by virtue of declaration under the provisional collection of Taxes Act, 1931. Thus, the net export order was issued only for those quantities for which the boat notes were issued and the balance quantity of iron ore was made liable for export duty.

3. Consequently, the Assistant Commissioner of Customs and Excise, Nellore Division vide his letter dated 05.02.2007 directed the Appellants to pay export duty of Rs. 2,02,80,000/- on the quantity of 33,000 metric tonnes and 34600 metric tones in terms of Finance Bill, 2007.

4. Feeling aggrieved, the Respondents preferred the appeal before the Commissioner, Central Excise and Customs (Appeals), Guntur and the learned Authority by its Order-in-Appeal No. 05/2007(G)CUS, dated 24.10.2007 confirmed the order passed by the Assistant Commissioner of Customs and Central Excise, Nellore Division holding that only 94,000 of iron ore were allowed for clearance under boat notes which was loaded into the vessels up to the midnight of 28.02.2007 and thus, it has to be construed that let export order was issued only for those quantities for which boat notes were issued, and the balance quantity of iron ore is liable to export duty and accordingly dismissed the appeal filed by the Respondents.

5. Challenging the said order, the Respondents preferred Customs Appeal No. 269/08 before the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench at Bangalore. The Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench at Bangalore which by its final order No. 68/09 dated 30.01.2009 set aside the order passed by the Assistant Commissioner of Customs and Central Excise, Nellore Division and allowed the appeal filed by the Respondents.

6. Assailing the findings recorded by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench at Bangalore, the department preferred the present appeal.

7. We have heard both the learned Counsel appearing for the parties.

8. The question therefore arises for determination in this appeal is as to whether the order passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench at Bangalore can be sustained.

9. Section 16 of the Customs Act lays down that the rate of duty and tariff violation, if any, applicable to any export goods, shall be the rate and valuation in force - (a) in case of goods entered for export u/s 50, on the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation u/s 51.

10. In terms of Section 51 when once the shipping bill is filed, the proper officer

after being satisfied that the goods are not prohibited goods and the exporter had paid the duty, if any assessed thereon, the proper officer should make the order permitting clearance and loading of goods for exportation.

11. In the instant case, on the date of filing of shipping bill, there was no export duty and there was only export cess which had been paid by the Respondents. Admittedly, the loading of goods was also commenced much prior to the imposition of export duty. The export duty was introduced only with effect from 01.03.2007. As rightly held by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench at Bangalore, the order u/s 51 of the Act is a composite order permitting clearance and loading of the goods for export and when such an order is passed, the relevant duty in terms of Section 16 is being date of that order, subsequent change in the rate of duty does not render the earlier order invalid. Since the assessment has been made prior to the imposition of export duty i.e. on 01.03.2007, and the same being collected prior to 01.03.2007, subsequent changes in the rate of duty are inconsequential. Therefore, we concur with the finding of the lower appellate authority and the appeal filed by the department is liable to be dismissed.

12. Accordingly, the appeal is dismissed. There shall be no order as to costs.

