# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
# BANGALORE

REGIONAL BENCH - COURT NO. 1

**Customs Appeal No. 20786 of 2019**

(Arising out of Order-in-Appeal No.412/2018 dated 24.12.2018 passed by the Commissioner of Customs, Bangalore.)

**The Commissioner of Customs,**
New Customs House, Panambur,
Mangaluru - 575 010.

Appellant(s)

*VERSUS*

**M/s. JSW Steel Ltd.**
Jindal Mansion, 5-A,
Deshmukh Marg,
Mumbai - 400 026.

Respondent(s)

**APPEARANCE:**

Mr. M.S. Nagaraja, Advocate for the Appellant.
Mr. P.S. Srinivasa, Asst. Commissioner (AR) for the Respondent.

**CORAM:**

**HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)**
**HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 20729 / 2026**

DATE OF HEARING: 02.06.2026

DATE OF DECISION: 02.06.2026

**PER: R. BHAGYA DEVI**

Briefly the facts are the respondent M/s. JSW Steels Ltd. imported coal and classified the same under CTH 2701 1910 and claimed the benefit of Notification No.21/2002-CUS dated 01.03.2002 and Notification No.20/2006-Cus. dated 01.03.2006. The Original Authority denied the benefit of the Notification and accordingly, confirmed duty amount of Rs.6,24,76,922/-. On appeal, the Commissioner (Appeals) allowed the benefit of the Notification based on the decision of the Hon'ble Supreme Court in the case of **Tata Chemicals Ltd. vs. CC (Preventive),**

**Jamnagar: 2015 (320) ELT 45 (SC).** Aggrieved by this order, the revenue is an appeal before us.

2. Learned Authorized Representative (AR) submitted that the Appellate Authority's observation that the samples was not drawn as per the procedure prescribed under IS Standard 436, cannot be sustained since the samples were drawn in the presence of Custom House Agent of the importer and the procedure of sampling was objected to only after the receipt of the test report. It is further submitted the testing has been carried out by the Central Institute of Mining and Fuel Research (CIFMR), Dhanbad an institute working under the Ministry of Science and Technology, Government of India. He further submits that there is no specific requirement of testing prescribed in the exemption Notification and testing for earlier samples following the same procedure was being accepted by the respondent. Another ground relied upon by the Commissioner (Appeals) is that the request of the respondent for retest was not considered. Since the respondent had not provided any reasons for retest and the request being made after eight months after the test report, the same was not considered. The test report issued at load port was also not a valid reason for the Commissioner (Appeals) to reject the test report.

3. The learned counsel on behalf of the respondent submitted that the imported coking coal was assessed provisionally in terms of Section 18(1)(b) of the Customs Act, 1962. The samples were drawn on 20.03.2012 and was sent to CIFMR Dhanbad on 16.04.2012, the test results were communicated only on 25.10.2012 and the respondent vide letter dated 21.11.2012 requested for considering the certificate of quality issued by independent testing agency at the load port and also

objected to the procedure of drawing the samples. Since the Original Authority finalized the order without providing an opportunity, an appeal was filed before the Commissioner (Appeals), who considered all the documents placed on records and decided the issue in their favour by allowing the benefit of the Notification. Therefore, it is submitted that the grounds taken by the Revenue now do not challenge any of the stand taken by the Commissioner (Appeals) in the impugned order. He submitted that the issue is squarely covered by decision by the Hon'ble Supreme Court in the case of **Tata Chemicals Ltd.** (supra).

4. Heard both sides and perused the records. The Commissioner (A) in the impugned order has allowed the appeal filed by the respondent on the ground that the samples drawn were not as per the procedure prescribed under IS-436 since the correct technical parameters and description will be known only if the above procedure is being followed. The challenge to this by the Revenue is that since the samples were drawn in the presence of Custom House Agent of the respondent and previously such reports have been accepted by the respondent, they cannot be allowed to question the same. It is also the case of the Revenue that since no such specific requirements of testing procedure is prescribed either under the Rules or under the exemption Notification, the same cannot be questioned. The Commissioner (A) has relied upon decision of the Hon'ble Supreme Court in order to justify the stand. We find that the Hon'ble Supreme Court in the case of **Tata Chemicals Ltd.** (supra) observed as follows:

> "**16.** The admitted position on record is that the samples drawn were not drawn in accordance with law and were drawn with no regard whatsoever to IS 436. That IS 436 would apply to the facts of the present case is made clear by our judgment reported in *Bombay Oil Industries (P)*

*Ltd.* v. *Union of India,* 1995 (77) E.L.T. 32 (S.C.), where this Court held following *Union of India* v. *Delhi Cloth & General Mills Co. Ltd.,* 1963 Suppl. (1) SCR 586 = 1977 (1) E.L.T. (J 199) (S.C.), that if the method of testing of any item of Central Excise tariff is not mentioned, then the Indian Standard Institution's method should be applied. That this would apply to the Customs Act as well. IS 436 lays down :-

*"5. SAMPLING FROM SHIPS DURING LOADING OR UNLOADING*

*5.1 Sub-lots - For the purpose of sampling, the entire quantity of coal in a ship shall be divided into a suitable number of sub-lots of approximately equal weight as specified in Table 1.*

*5.1.1 A gross sample shall be drawn from each of the sub-lots and shall be kept separately so that there will be as many gross samples as the number of sub-lots into which the lot has been divided.*

*5.2. Sampling of coal from ships shall be carried out, as far as practicable, when coal is in motion. If it is taken on a conveyer, the gross sample shall be collected as per the procedure laid down in Table 3. If not, the gross samples may be drawn during loading or unloading of the ship. For this purpose, the number of increments to be taken shall be governed by the weight of the gross sample and the weight of increment as specified in Table 3 for various size groups of coal."*

TABLE 1 NUMBER OF SUB-LOTS/GROSS SAMPLES

(Clauses 0.3.4.1 and 3.1 )

| **Weight of the Lot (Metric Tonnes)** | **No. of sub-Lots/Gross Samples** |
|---|---|
| Upto 500 | 2 |
| 501 to 1000 | 3 |
| 1001 to 2000 | 4 |
| 2001 to 3000 | 5 |
| Over 3000 | 6 |

Then the IS 436 goes on to describe the procedure to reduce a gross sample into a sample for a lab test etc. in great detail, and speaks about the minimum weight of a gross sample being 75 Kg so far as "Coal, small" is concerned.

**17.** Clearly the samples drawn by the Inspector in the present case, have been drawn contrary to the express provisions of IS 436. On this count also, the samples being drawn not in accordance with law, test reports based on the same cannot be looked at.

> The Tribunal's judgment has proceeded on the basis that even though the samples were drawn contrary to law, the appellants would be estopped because their representative was present when the samples were drawn and they did not object immediately. This is a completely perverse finding both on fact and law. On fact, it has been more than amply proved that no representative of the appellant was, in fact, present at the time the Customs Inspector took the samples. Shri K.M. Jani who was allegedly present not only stated that he did not represent the Clearing Agent of the appellants in that he was not their employee but also stated that he was not present when the samples were taken. In fact, therefore, there was no representative of the appellants when the samples were taken. In law equally the Tribunal ought to have realized that there can be no estoppel against law. If the law requires that something be done in a particular manner, it must be done in that manner, and if not done in that manner has no existence in the eye of law at all. The Customs Authorities are not absolved from following the law depending upon the acts of a particular assessee. Something that is illegal cannot convert itself into something legal by the act of a third person".

In view of the above decision of the Hon'ble Supreme Court, we do not find any justification given by the Revenue to disprove the findings given by the Commissioner (A) in the impugned order.

5. The Commissioner (A) has further allowed the appeal on the ground that the test results of the load port test report and test results given by CIMFR were not matching and hence, the request of the respondent for re-testing the same by an independent laboratory should have been accepted by the Revenue. We find that Commissioner (A) was justified in stating that if there is a variation in the test reports, the request of the respondent to retest the same cannot be ignored. The Revenue's challenge to this is that the respondent had requested for retest after eight months; hence, it is an afterthought. However, we

find that the test report itself was communicated to the respondent only after a lapse of eight months; hence, the delay in their request. Therefore, we do not find any justification in the appeal filed by the Revenue, the same is dismissed.

Appeal is dismissed.

(Operative portion of the order was pronounced
in Open Court on conclusion of hearing.)

**(P.A. AUGUSTIAN)**
**MEMBER (JUDICIAL)**

**(R. BHAGYA DEVI)**
**MEMBER (TECHNICAL)**

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