IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 75564 of 2026

(Arising out of Order-in-Appeal No. 33/CUS/CCP/7/2026 dated 24.04.2026 passed by the Commissioner (Appeals), G.S.T., C.X. & Customs, Central Revenue Building, Rajaswa Vihar, Bhubaneswar – 751 007, Odisha)

M/s. OCL Iron & Steels Limited **: Appellant**
(Earlier known as 'Praful Enterprises Private Limited'),
Ground Floor, Khata No. 52/72, Plot No. 163/311,
Bhadrasahi, Keonjhar - 758 035 (Odisha)

VERSUS

Commissioner of Customs (Preventive) **: Respondent**
Bhubaneswar Commissionerate,
C.R. Building, Rajaswa Vihar,
Bhubaneswar – 751 007 (Odisha)

APPEARANCE:

Shri Indranil Banerjee, Advocate, for the Appellant

Shri Subrata Debnath, Authorized Representative, for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 76016 / 2026

DATE OF HEARING: 15.07.2026

DATE OF DECISION: 05.08.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed assailing Order-in-Appeal No. 33/CUS/CCP/7/2026 dated 24.04.2026 passed by the Commissioner (Appeals), GST, Central Excise & Customs, Bhubaneswar, whereby the Order of Final Assessment No. CUS/PDP/AC/EXPORT/24 dated 05.02.2025 passed by the Assistant Commissioner, Paradeep Customs Division, Paradeep, finalizing the provisional assessment of Shipping Bill No. 3437925 dated 24.08.2023 filed through the appellant's Customs House Agent, namely, M/s. Liberty Marine Syndicate

Pvt. Ltd., in respect of export of Iron Ore Fines of Indian Origin through vessel MV Young Harmony (ROT No. 279639 dated 24.08.2023), and assessing the export goods to export duty/cess at the rate of 30% under Customs Tariff Heading 26011149 of the Second Schedule to the Customs Tariff Act, 1975, has been upheld.

2. Briefly stated, the facts of the case are that the appellant, M/s. OCL Iron & Steels Limited (formerly known as 'M/s. Praful Enterprises Private Limited'), exported Iron Ore Fines of Indian Origin to M/s. BST (HK) Ltd., Hong Kong under Contract No. PE/BST/008/2023-24 dated 10.08.2023 through Shipping Bill No. 3437925 dated 24.08.2023, covering export of the goods through the vessel MV Young Harmony. During the relevant period, export duty on iron ore fines was dependent upon the Fe (Iron) content of the exported goods, with iron ore fines containing Fe content of 55% or more but below 58% being exempt from export duty under Notification No. 27/2011-Cus. dated 01.03.2011, as amended, whereas goods containing Fe content above the prescribed threshold attracted export duty under the applicable tariff entry.

3. The Shipping Bill was initially provisionally assessed upon execution of a Provisional Duty Bond and furnishing of Bank Guarantee. The export goods were provisionally classified under Customs Tariff Heading 26011149 and assessed to export duty/cess at the rate of 30% on the basis of the Pre-Shipment Analysis Report dated 24.08.2023 issued by M/s. Inspectorate Griffith India Pvt. Ltd., wherein the Fe content was indicated as 60.00%, and the appellant deposited export duty/cess amounting to Rs.6,94,39,034/-.

4. At the same time, representative samples of the export goods were drawn by the Customs authorities in the presence of the appellant and forwarded to the Central Revenue Control Laboratory (CRCL), Visakhapatnam for chemical examination, the Department entertaining a doubt regarding the actual Fe content of the export goods. Subsequently, the CRCL, Visakhapatnam issued its test report dated 26.09.2023 determining the Fe content of the impugned Iron Ore Fines at 57.60% (dry basis). The said result was broadly consistent with the Load Port Test Report (LPTR) reflecting Fe content of 57.82%, as well as the Discharge Port Test Report (DPTR) indicating Fe content of 57.70%, all of which recorded Fe content below the threshold of 58%.

5. It was the appellant’s case that the Load Port and Discharge Port Test Reports assume relevance in terms of Board's Circular No. 12/2014-Cus. dated 17.11.2014. It was further the appellant's case that the export transaction was ultimately settled on the basis of the Load Port Test Report, the final commercial invoice having declared Fe content of 57.82%, resulting in proportionate price adjustment under the export contract, which was accepted by the overseas buyer and reflected in the Bank Realisation Certificates.

6. However, the Customs authorities entertained a doubt regarding the apparent discrepancy between the Fe content declared in the Shipping Bill on the basis of the Pre-Shipment Analysis Report and Form-I declarations, on the one hand, and the Load Port Test Report, Discharge Port Test Report and CRCL, Visakhapatnam report, on the other. Accordingly, duplicate remnant samples were forwarded for re-testing to CRCL, New Delhi in the

month of June, 2024. Thereafter, after a considerable time-gap from the date of export, CRCL, New Delhi issued its re-test report dated 29.11.2024 determining the Fe content of the samples at 60.42%.

7. Placing reliance upon the aforesaid re-test report, while discarding the earlier Load Port Test Report, Discharge Port Test Report and the report of CRCL, Visakhapatnam, the Assistant Commissioner, Paradeep Customs Division, Paradeep finalized the provisional assessment vide Order of Final Assessment No. CUS/PDP/AC/EXPORT/24 dated 05.02.2025 by classifying the exported goods under Customs Tariff Heading 26011149, confirming levy of export duty/cess at the rate of 30%, determining the assessable value at Rs.23,25,95,044/-, and holding that the exported Iron Ore Fines contained Fe content exceeding 58%. While doing so, the adjudicating authority observed that the CRCL, New Delhi report was consistent with the Fe content declared by the appellant at the time of filing the Shipping Bill and the Form-I declarations furnished by the mining authorities at the time of procurement, and consequently declined to accept the appellant's contention that the export goods contained Fe below the dutiable threshold.

7.1. Against the above Final Assessment Order, the appellant preferred an appeal before the Ld. Commissioner (Appeals), G.S.T., C.X. & Customs, Bhubaneswar, inter alia contending that the contemporaneous Load Port Test Report, Discharge Port Test Report and the report of CRCL, Visakhapatnam consistently reflected Fe content below the statutory threshold; that the re-testing undertaken after substantial delay could not form a reliable basis for assessment; and that the export transaction itself stood commercially concluded on the basis of the lower Fe content accepted by both the exporter and the overseas buyer. The Ld. Commissioner (Appeals), however, vide the impugned Order-in-Appeal dated 24.04.2026, rejected the said appeal and affirmed the Final Assessment Order dated 05.02.2025, principally holding that the appellant's own declaration of Fe content at the time of export justified reliance upon the CRCL, New Delhi report notwithstanding the earlier reports indicating Fe content below 58%.

7.2. Aggrieved thereby, the appellant has filed the instant appeal.

8. During the course of hearing, the Ld. Counsel appearing on behalf of the appellant, while disputing and denying the findings of the authorities below, inter alia, advances the following submissions: -

<u>I. The report by CRCL, Vizag was scientifically accurate and reliable and re-test in the present facts and circumstances was wholly unwarranted</u>

(i) There was no tenable basis for a re-test, since the Load Port Test Reports and the Discharge Port Test Report in the instant case were aligned with the report of CRCL, Vizag dated 26.09.2023. The said test report of CRCL, Vizag dated 26.09.2023 was conclusive, being based on drawal of representative samples and accurate testing and was in total conformity with Circular No. 12/2014-Cus dated 17.11.2014. Representative sampling is a scientifically accepted and legally recognized method of assessment. Such test report of CRCL, Vizag established beyond doubt that the ferrous content of the export goods was below 58%.

(ii) Neither the Pre-shipment Analysis Report dated 24.08.2023 nor the Form Is under cover whereof export consignments had been procured from the mines were based on representative samplings done in the presence of the customs authorities. The reference for re-test was wholly unwarranted. Charging export duty @30% by denying exemption benefit was clearly illegal and arbitrary.

II. Re-test report dated 29.11.2024 was inordinately delayed and otherwise unreliable

(i) Even otherwise, the purported re-test report dated 29.11.2024 from CRCL, New Delhi was ex-facie inadmissible and unreliable on account of inordinate delay. Under Circular No. 30/2017-Cus dated 18.07.2017, re-test, if any, was required to be done immediately, whereas in the instant case such re-testing was completed after more than 1 year 3 months from the date of shipment. It is settled law that delay affected the moisture content of the samples being tested, meaning thereby that inaccurate and unreliable readings were stated in the re-test report of CRCL, New Delhi. In this regard, reliance is being placed on the following decisions:

a. *Final order dated 18.08.2023 passed by this Hon'ble Tribunal in M/s Vedanta Ltd. v. Commissioner of Customs (Preventive), Bhubaneshwar, C/79383/2018;*

b. *Final order dated 04.12.2024 passed by this Hon'ble Tribunal in Commissioner of Customs (Preventive) v. M/s Essel Mining & Industries Ltd., C/75881/2023;*

c. *Judgment dated 15.01.2026 passed by the Hon'ble Orissa High Court in Commissioner of Customs (Preventive), Bhubaneshwar v. M/s Essel Mining & Industries Ltd., OTAPL/50/2025.*

(ii) The impugned re-test by CRCL, New Delhi was also in violation of the mandatory procedures and safeguards under the Customs Act, 1962 and more particularly Sections 17, 18, 51 and 144 thereof. The said re-test report was also incomplete and did not specify the scientific method followed in re-testing. It was apparent on the face of the records that the procedure and steps for scientific and accurate testing provided in the Manual of Revenue Laboratories as well as relevant BIS specifications had not been adhered to, which constituted fatal defects.

(iii) On the aforesaid grounds alone, the purported re-testing deserved to be discarded with the purported final assessment order passed by placing reliance thereon warranting interference. The proper officer as well as the appellate authority committed a grave error by holding that since the method employed for testing related to dry basis with the sample being roasted to evaporate moisture, delay did not have any bearing insofar as moisture content at the time of export was concerned.

III. Finalization of provisional assessment was contrary to the provisions of the Customs Act, 1962

(i) Further and in any event, the Load Port certificate dated 04.09.2023 issued by Therapeutics Chemical Research Corporation formed basis of the appellant's final invoice and was determinant of transaction value within the meaning of Sections 12 and 14 of the Customs Act, 1962. The export contract had been performed by the parties concerned by placing reliance on the said certificate dated 04.09.2023 issued by Therapeutics Chemical Research Corporation, which too reflected Fe content below 58%.

(ii) As a result, classification of the exported iron ore fines ought to have been effected by accepting such test report which was the decisive factor but the Customs Department fell in error by doing otherwise. CRCL Vizag's test report supported such Load Port certificate.

IV. Export contract in question had been mis-construed by the Customs Department, which failed to acknowledge that all parties had performed their contractual obligations by accepting Fe content below 58%

(i) The documents on record, especially the Bank Realization Certificates established that the export contract had been performed by acknowledging 'Fe' content at 57.82% as per the aforementioned Load Port certificate dated 04.09.2023. Proportionate penalty had also been deducted from the final price payable in view of ferrous content falling below 58% as per the terms and conditions of the export contract in question. The appellant's dealing with the foreign buyer ought to have been acknowledged and the contractual terms and conditions could not have been read in the manner as had been purportedly done by the Customs authorities in the instant case. It was wholly arbitrary to have insisted for realization of differential export proceeds when the correct factual position was that the appellant had not recovered any amount towards customs duty from its foreign buyer and had suffered proportionate penalty for 'Fe' content having fallen below 58%. The Customs Department ought not to have attempted to re-write the terms of the export contract between the parties or questioned fulfilment of the stipulations thereof.

(ii) The present case was a fit case for interference with the impugned appellate order dated 24.04.2026 which upheld the purported final assessment order dated 05.02.2025. There does not arise any question of chargeability to export duty by effecting classification of the exported iron ore fines under Tariff Entry 2601 11 49 and denial of exemption benefit under the applicable notifications.

8.1. In view of the submissions aforesaid, the Ld. Counsel for the appellant prayed for setting aside the impugned Order-in-Appeal affirming the Final Assessment Order dated 05.02.2025, for quashing the final assessment of the impugned Shipping Bill whereby export duty/cess at the rate of 30% has been levied, and thus, for allowing the instant appeal, granting consequential reliefs therewith.

9. The Ld. Authorized Representative appearing for the Revenue reiterated the findings recorded by the authorities below and submitted that the Final Assessment Order, as affirmed by the Commissioner (Appeals), does not suffer from any legal or factual infirmity warranting interference. It was contended that the report of CRCL, New Delhi, being the report of the departmental laboratory, conclusively determined the Fe content of the exported Iron Ore Fines at 60.42% and, therefore, constituted the most reliable evidence for the purpose of final assessment. He further submitted that the appellant itself had consistently declared the Fe content of the export goods as 60.00% at the time of filing the Shipping Bill and had also furnished the Pre-Shipment Analysis Report dated 24.08.2023 issued by M/s. Inspectorate Griffith India Pvt. Ltd. reflecting Fe content at 60.00%. According to the Ld. Authorized Representative, the subsequent attempt on the part of the appellant to rely upon other test reports indicating Fe content below 58% was an afterthought, intended solely to avoid payment of export duty legitimately leviable on the goods. It was, therefore, contended that the exported goods were rightly held to be dutiable under the applicable tariff entry and that the appellant, having consciously declared the goods as containing Fe content above the prescribed threshold, cannot now be permitted to resile from its own declaration to claim exemption from export duty. He accordingly prayed that the impugned Order-in-Appeal affirming the Final Assessment Order be upheld and the appeal be dismissed.

10. Heard both the sides and perused the records available before us.

11. We find that dispute in the present appeal lies in the determination of the Fe content of the exported Iron Ore Fines, the appellant asserting that the contemporaneous test reports establish Fe content below 58%, rendering the goods exempt from export duty, whereas the Revenue places reliance upon the subsequent re-test conducted by CRCL, New Delhi indicating Fe content of 60.42%, to sustain the final assessment and levy of export duty. The principal issue, therefore, to be decided by us, is whether the authorities below were justified in disregarding the contemporaneous evidences available on record and in placing exclusive reliance upon the subsequent re-test report for Final Assessment of the impugned Shipping Bill.

12. We observe that the Ld. adjudicating authority has relied upon the Board Circular No. 12/2014-Cus. dated 17.11.2014 to justify the retest and determine the duty on the basis of the said re-test report. We have perused the Board Circular cited sura. We find that the said Circular does not confer an overriding or conclusive evidentiary preference upon the Load Port Test Report or the Discharge Port Test Report where circumstances exist warranting further examination, the same does not equally confer any unfettered or arbitrary discretion upon the Department to disregard contemporaneous material evidences / CRCL Report already available with the authorities and resort to repeated testing merely because the results obtained are perceived to be inconsistent with the declaration furnished by the exporter. The power to undertake a re-determination or re-testing is not an end in itself; it must necessarily rest upon objective, discernible and legally sustainable grounds. Any departure from the contemporaneous evidences must be founded

upon cogent reasons borne out from the record and not upon mere suspicion or conjecture.

12.1. In the facts obtaining herein, we find no such legally sustainable foundation warranting a re-test. The representative samples of the export goods were admittedly drawn by the Customs officers in the presence of the appellant and were forwarded to CRCL, Vizag for analysis. The report issued by CRCL, Vizag on 26.09.2023 determined the Fe content of the exported Iron Ore Fines at 57.60%. For better appreciation of the said facts, the Report issued by CRCL, Vizag dated 26.09.2023 is reproduced hereunder: -

Government of India
Ministry of Finance
Department of Revenue
CUSTOM HOUSE LABORATORY
5th FLOOR
CUSTOM HOUSE, PORT AREA
VISAKHAPATNAM – 530 001.
Tel/Fax: 0891-2562900
e-mail -:chemical_examiner@yahoo.com

TC 1022

ULR NO –TC1022122000005 32F CHLVSKP/QR51

TEST REPORT Date: 26.09.2023

Lab NO: VCL/EXP/4042 Date: 20.09.2023
SB. No: 3437925 Date: 24.08.2023
T.M. No.: 129/2023-24 Date: 24.08.2023
Sample Received from: Superintendent, Paradip Custom House, Odisha
Description of Sample: Iron ore fines
Date of Receipt: 20.09.2023
Period of test: -20.09.2023 to 26.09.2023
Sample Plan: Sample not Drawn by this laboratory

Report: The sample is in the form of reddish brown coarse powder along with small lumps. It is mainly composed of oxides of Iron and together with small amount of oxides of Aluminium and Silicon. More than 95% of sample (as received) passes through 10mm sieve. The sample is Iron Ore.

S.No	Test Parameters	Unit	Test Results	Test Method
1	Moisture Content (As received)	% by wt	9.0	IS 1493:1959 RA 2016
2	Total Iron Content (on dry basis)	% by wt	57.6	IS 1493:1959 RA 2016
3	Silica Content (on dry basis)	% by wt	6.7	IS 1493(Part –I) :1981 RA 2016
4	Alumina Content (on dry basis)	% by wt	5.0	IS 1493:1959 RA 2016

Sealed remnant sample returned herewith.

26.09.23
Dr. SANTU DAS
Chemical Examiner Grade-II

END OF THE REPORT

Note 1: The results relate only to the items tested.
Note 2: Sample not Drawn by this laboratory.
Note3: The report shall not be reproduced except in full without approval of this laboratory.
Note4: Remnant sample should be collected within 30 days otherwise it will disposed off.

12.2. Significantly, this result did not stand in isolation. The contemporaneous Load Port Test Report reflected Fe content at 57.82%, while the Discharge Port Test Report likewise recorded Fe content at 57.70%. Thus, three independent contemporaneous determinations, undertaken at different stages of the export transaction, substantially corroborated each other and consistently established that the Fe content of the export goods remained below the threshold of 58%. The remarkable consistency amongst these reports cannot be lightly brushed aside nor can it be treated as a mere coincidence devoid of evidentiary significance.

12.3. In fact, we have taken note of the fact that the contemporaneous Load Port Certificate dated 04.09.2023 issued by M/s. Therapeutics Chemical Research Corporation (TCRC), reflecting Fe content at 57.82%, formed the very foundation of the appellant's Final Invoice and consequently governed the ultimate transaction value of the export consignment. The export contract between the appellant and the overseas buyer stood performed on the strength of the said certificate, with the contractual price being correspondingly adjusted in terms of the agreed quality parameters. In these circumstances, and in the absence of any cogent material establishing the same to be erroneous or unreliable the authorities below, we are of the view that the above Certificate could not have lightly brushed by the Revenue. Such an approach not only disregards the contemporaneous evidentiary record but also overlooks the commercial realities of the transaction itself.

12.4. Equally significant is the fact that the report of CRCL, Vizag was founded upon representative sampling undertaken in accordance with the prescribed procedure. Representative sampling is neither an empty procedural formality nor a mere technical ritual; it constitutes the very substratum upon which scientific reliability of laboratory analysis rests. Particularly in the case of Iron Ore Fines, whose chemical composition and moisture distribution are susceptible to variation across different portions of the cargo, the methodology adopted for drawal of samples assumes paramount importance. It is precisely for this reason that the Bureau of Indian Standards, under IS 1405 (Iron Ores — Sampling and Sample Preparation), prescribes a meticulous procedure involving representative sampling through multiple increments so as to faithfully capture the true characteristics of the entire lot. The legal acceptability of any report in such cases is, therefore, inextricably linked with the integrity of the sampling process itself. Once representative samples have been scientifically drawn and analysed by the jurisdictional Customs laboratory in conformity with the prescribed procedure, such report ordinarily commands considerable evidentiary value unless demonstrated to suffer from any patent procedural irregularity or scientific infirmity.

12.5. In this connection, we find considerable substance in the contention of the appellant that neither the Pre-Shipment Analysis Report dated 24.08.2023 nor the various Form-I declarations, which have been heavily relied upon by the Revenue, could legitimately constitute the basis for discarding the report of CRCL, Vizag as admittedly, those documents were not generated upon representative sampling undertaken in accordance with the prescribed BIS methodology, nor were such samples drawn in the presence or under the supervision of the Customs authorities. On the contrary, the report of CRCL, Vizag was based upon representative samples drawn by the Customs officers themselves in accordance with the prescribed procedure. Once such representative sampling culminated in a laboratory report consistently indicating Fe content below 58%, and the same stood independently corroborated by both the Load Port and Discharge Port Test Reports, there existed no rational basis for discarding that body of contemporaneous scientific evidence merely because it did not accord with the declaration initially furnished by the exporter.

13. At this juncture, it becomes necessary to undertake a close scrutiny of the relevant contractual provisions, which bears material significance to the lis involved in the present appeal. The relevant articles of the said Contract No. PE/BST/008/2023-24 dated 10.08.2023 are set out hereunder: -

"Article 7-Price

Price USD 52.25 PER DMT (Excluding Customs Duty) FOB Main Port(s) China on the Basis of Fe 60.00% (On Dry basis)

Customs Duty @30% on FOB to be paid by buyer to seller, for paying the same to the customs, once and above the above mentioned price.

Port DA charges to be paid by seller directly to the nominated agents at Load port.

Article 8: Shipping Terms

Loading Terms: COD, No demurrage/dispatch

Other terms as per prevailing charter party

Article 9-Payment

Payment to be made on D/P or D/A Basis or Advance at Sight.

Full Payment of Final Invoice to be cleared within 15 days from the date of Final Invoice.

Article 10-Price Adjustment

10A) Price Adjustment (On Dry Basis)

60% Fe Contents (On Dry Basis)

FE BONUS WILL BE USD 0.871 PER DMT FOR EACH 1% FE IN CASE OF FE ABOVE 60.00%, FRACTIONS PRO-RATA.

FE PENALTY WILL BE USD 0.871 PER DMT FOR EACH 1% FE IN CASE OF FE BELOW 60.00%, FRACTIONS PRO-RATA.

...

Article 11-Inspection

11.1 MINERALS LAB SERVICES PVT LTD/INSPECTORATE GRIFFITH INDIA PVT LTD/THERAPEUTICS CHEMICAL RESEARCH CORPORATION/COTECNA INSPECTION INDIA PRIVATE LIMITED shall inspect the Commodity for Quantity and Quality at place of loading at the Seller's account. Buyer may send an inspection Team, at their own expense and risk, to observe the inspection and loading of Commodity at loading Port, and Buyer may, at buyer's expense, has the right to appoint an independent surveyor to make the pre-shipment analysis and protective analysis at the loading port.

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Article 13-Documents to be presented for Payment within 10 days after shipment date

Payment

1. Signed commercial invoice for 100% cargo value based on certificate of quality and weight issued by MINERALS LAB SERVICES PVT LTD/ INSPECTORATE GRIFFITH INDIA PVT LTD/THERAPEUTICS CHEMICAL-RESEARCH CORPORATION/COTECNA INSPECTION INDIA PRIVATE LIMITED 3 originals indicating full cargo value, 100% cargo value and name of carrying vessel

2. 3/3 full set of original clean on-board bills of lading made out to order, blank endorsed, notifying the party specified, marked 'Freight payable as per charter party".

3. Certificate of Quality in 1 original and 2 copies issued by MINERALS LAB SERVICES PVT LTD/ INSPECTORATE GRIFFITH INDIA PVT LTD/THERAPEUTICS CHEMICAL RESEARCH CORPORATION/COTECNA INSPECTION INDIA PRIVATE LIMITED

4. Certificate of Weight in 1 original and 2 copies issued by MINERALS LAB SERVICES PVT LTD/INSPECTORATE GRIFFITH INDIA PVT LTD/THERAPEUTICS CHEMICAL RESEARCH CORPORATION/COTECNA INSPECTION INDIA PRIVATE LIMITED.

5. Certificate of Origin in 1 original and 2 copies issued by any chamber of Commerce in India or by Beneficiary.

6. Beneficiary's certificate certifying that one set of documents has been fax or email to applicant within 7 working days after shipment date

Article 14-Weighing

A) Weighing at Loading Port:

At loading port Seller at Seller's expense appoint MINERALS LAB SERVICES PVT LTD/ INSPECTORATE GRIFFITH INDIA PVT LTD / THERAPEUTICS CHEMICAL RESEARCH CORPORATION/COTECNA INSPECTION INDIA PRIVATE LIMITED at seller's option to determine the weight of the shipment of ore by draft survey. The weight of ore certified by Inspection agency shall be the basis for Seller's provisional invoice as well as final Invoice. Buyer may at buyer's expense have its representative(s) present during the draft survey.

Article 15-Sampling & Analysis

At the loading port seller shall at seller's expense to appoint MINERALS LAB SERVICES PVT LTD/INSPECTORATE GRIFFITH INDIA PVT LTD / THERAPEUTICS CHEMICAL RESEARCH CORPORATION/COTECNA INSPECTION INDIA PRIVATE LIMITED to determine the specification of ore content in the shipment, and shall provide a certificate showing Chemical composition and also the percentage of free moisture loss at 105°C. Buyer, if felt necessary, would depute their representative or nominate agency at their cost to witness operations at loading port.

> *Buyer to provide any third-party analysis certificate of Discharge Port to the seller within 30 days of completion of discharge of vessel at China for the reference of Seller.*
>
> *If there is any major difference in comparison between Load Port and Discharge Port results, the same to be mutually agreed between Seller and Buyer.*
>
> *The certificate should have Fe Content on dry Basis and wet Basis."*

13.1. From a plain reading of the aforesaid contractual stipulations, it can be observed that the terms of the export contract unequivocally demonstrate that the transaction between the appellant and the foreign buyer was liable to price adjustment depending upon the actual Fe content of the exported iron ore fines, with proportionate deductions envisaged in the event of any deficiency in the agreed specifications. Admittedly, the contractual arrangement was acted upon by the parties in question. In such circumstances, the Customs authorities were not justified in construing the contractual provisions in a manner contrary to the commercial understanding between the contracting parties. Equally, the insistence upon realization of differential export proceeds, despite there being no material to indicate that the appellant had recovered any amount towards customs duty from its foreign buyer and despite the admitted deduction of proportionate contractual penalty, is wholly arbitrary and unsupported by the contractual framework governing the transaction. The Department, in effect, sought to attribute consequences not contemplated by the parties themselves, which cannot merit acceptance.

13.2. Further, another aspect which deserves mention, is the manner in which the export transaction itself ultimately stood concluded between the appellant and the overseas buyer. It is borne out from the contractual documents that the appellant suffered a proportionate deduction in the sale consideration on account of the Fe content being found deficient vis-à-vis the contractual benchmark. Although the quantum of such contractual deduction may not, per se, constitute conclusive proof of the precise Fe percentage being below the statutory threshold of 58%, it nevertheless constitutes a highly relevant contemporaneous circumstance which lends considerable assurance to the appellant's version that the quality of the exported goods did not correspond with the initially declared Fe content of 60%. Viewed from another perspective, had the exported goods in fact possessed Fe content of 60.42%, as subsequently reported by CRCL, New Delhi, the very foundation for imposition of contractual deductions by the foreign buyer would stand substantially eroded. The contemporaneous commercial conduct of the contracting parties, therefore, assumes considerable evidentiary significance and cannot be lightly disregarded. It furnishes an independent piece of corroborative evidence which accords with the findings recorded in the Load Port Test Report, the Discharge Port Test Report and the report of CRCL, Vizag, while simultaneously rendering the solitary re-test report of CRCL, New Delhi susceptible to serious doubt.

13.3. We also find the observation of the Commissioner (Appeals), that such deduction necessarily implied Fe content below 59% and not below 58%, to be equally untenable. Such an inference is founded upon mere conjecture and is unsupported by any scientific evidence or contractual stipulation warranting such conclusion. The authorities below could not have imported their own interpretation into the commercial arrangement between the contracting parties so as to defeat the appellant's otherwise sustainable claim, especially when the Final Invoice and the Bank Realization Certificates unmistakably demonstrate that the sale consideration ultimately stood adjusted in accordance with the agreed quality variation mechanism, resulting in a proportionate deduction on account of the Fe content falling below the contractual benchmark. The findings recorded in this regard, therefore, cannot be sustained in the eyes of law.

13.4. Moreover, the contemporaneous record, particularly the Final Invoice and the corresponding Bank Realization Certificates, does not indicate that the appellant had recovered any amount from the overseas buyer towards the export duty/cess in question. On the contrary, the material on record demonstrates that the contractual consideration itself stood reduced on account of the quality variation of the exported goods, resulting in a proportionate deduction from the sale price. In such circumstances, the assumption that the appellant had recovered the incidence of export duty from the foreign buyer is wholly unsupported by any cogent evidence and appears to have been arrived at on mere conjecture. The Revenue having failed to place on record any cogent, independent or contemporaneous material capable of displacing this consistent evidentiary chain, the direction to realize differential export proceeds, founded upon such an erroneous premise, therefore cannot be sustained in the eyes of law.

14. We also find that the entire case of the Department ultimately rests upon the solitary re-test report issued by CRCL, New Delhi after an inordinate lapse of time. In our considered view, such delay assumes considerable legal significance when the very report obtained belatedly is sought to constitute the sole foundation for fastening a substantial fiscal liability upon the appellant. The burden squarely rested upon the Revenue to establish, through convincing and legally sustainable evidence, that the contemporaneous reports consistently reflecting Fe content below 58% were scientifically unreliable or procedurally infirm. No such endeavour is discernible from the record. In fact, the above re-test report dated 29.11.2024 issued by CRCL, New Delhi lacks any determinative evidentiary value. Even assuming that a re-test was otherwise permissible in law, the manner in which the same was undertaken renders the report wholly unsafe for the purpose of determining the appellant's liability to export duty. It is an admitted position that the subject goods were exported in August, 2023, whereas the remnant samples were forwarded for re-testing only after an inordinate lapse of time, culminating in issuance of the impugned report more than one year and three months after shipment. Such extraordinary delay strikes at the very root of the reliability of the re-test itself.

14.1. It is no longer res integra that inordinate delay in testing has a direct bearing on the moisture content of the samples and, consequently, on the accuracy and evidentiary value of the test results. The above issue has been dealt with by this Tribunal in the case of *M/s. Vedanta Ltd. v. Commissioner of Customs (Preventive), Bhubaneswar [Final Order No. 76352 of*

2023 dated 18.08.2023 in Customs Appeal No. 79383 of 2018 – CESTAT, Kolkata], wherein it was observed as under: -

> *"20. It can be observed from the above decisions of the Tribunal that the Tribunal has been consistently holding that the moisture content has to be taken into account and the final Fe content of the DMT has to be arrived at. But for carrying out this exercise, the sample should be drawn and tested as early as possible. Such direction has been given by CBEC and BIS as seen as Para 3 above. As can be seen from the first table above, the Department has taken time between 105 days to 138 days to complete the sample testing and give the Report. On the other hand, the Government Recognized Private Laboratories engaged by the Appellant have taken just 6 to 9 days to complete this entire exercise. As there has been a huge delay between the date of collection of sample and testing of the sample by the CRCL and the number of days taken by the Private Labs are much lesser in the second case, the values arrived at by the Government Recognized Private Laboratories" Reports are likely to be more accurate, since they had completed the Testing nearer to the date of drawing of samples. The decisions of the cited case law are squarely applicable to the fact of the present case."*

14.1.1. A similar issue has also been examined in the case of *Commissioner of Customs (Preventive), Bhubaneswar v. M/s. Essel Mining & Industries Ltd. [Final Order No. 77815 of 2024 dated 04.12.2024 in Customs Appeal No. 75881 of 2023 – CESTAT, Kolkata]* wherein the Bench has held that: -

> *"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 sample 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 17.11.2014, 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.

...

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 in the 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."

14.1.2. The above decision of this Tribunal has also been affirmed by the Hon'ble Orissa High Court vide its judgement dated 15.01.2025 in OTAPL No. 50 of 2025.

14.2. In any case, Circular No. 30/2017-Cus. dated 18.07.2017 leaves little room for ambiguity inasmuch as it contemplates that wherever re-testing is considered necessary, the same should be undertaken with utmost expedition so as to preserve the integrity of the representative sample. The rationale underlying such procedural safeguard is neither incidental nor ornamental. It is founded upon elementary scientific principles that the characteristics of a stored sample are liable to undergo alteration with passage of time, particularly where the commodity involved comprises Iron Ore Fines, whose moisture content is inherently susceptible to gradual environmental variation. The procedural discipline prescribed under the Circular, therefore, constitutes an indispensable safeguard against deterioration of the evidentiary value of the sample itself. The Revenue, having failed to adhere to such prescribed procedure, cannot subsequently derive advantage from the consequences of its own inaction.

14.3. The reasoning adopted by the authorities below that delay became wholly irrelevant since the samples were ultimately tested on a dry-weight basis, after roasting at the temperature of 105 degrees Celsius, does not commend acceptance. Such reasoning, with respect, proceeds on an erroneous appreciation of the scientific process involved. Heating the sample at the laboratory stage merely eliminates the residual moisture present in the specimen at the time it is subjected to analysis. It does not, and indeed cannot, restore or reconstruct the moisture which had already escaped through natural evaporation during prolonged storage over several months prior to the commencement of the testing process. Once such environmental moisture loss has occurred before laboratory analysis, the physical characteristics of the sample itself undergo alteration, rendering the subsequent analysis incapable of faithfully representing the condition of the goods as they existed at the time of export. The assumption that laboratory roasting neutralizes the consequences of prolonged storage is, therefore, scientifically untenable. The cumulative effect of these circumstances leaves us with little hesitation in holding that the re-test report of CRCL, New Delhi, under the circumstances as obtaining in this case, cannot be accorded precedence over the contemporaneous scientific evidence already available on record. Once the very foundation of the re-test stands vitiated by unexplained procedural delay and attendant scientific uncertainty, the consequential final assessment founded substantially thereupon cannot be sustained in the eyes of law.

14.4. The inordinate delay on the part of the Department in forwarding the samples for re-testing, and in obtaining the report from CRCL, New Delhi, has, in the peculiar facts of the present case, proved fatal to the Revenue's case. Rather than discharging the burden cast upon it by adducing cogent corroborative evidence, the Revenue has sought to justify the impugned final assessment solely by placing reliance upon the belated report of CRCL, New Delhi, notwithstanding the existence of a consistent body of contemporaneous scientific and commercial evidence pointing in the opposite direction. Such an approach, founded upon a solitary report whose evidentiary worth is itself rendered doubtful by the surrounding circumstances, cannot form the basis for denying a statutory exemption and levying export duty carrying serious civil consequences. The impugned action, therefore, cannot be sustained either on facts or in law.

15. In our considered opinion, therefore, the very reference of the remnant samples for re-testing before CRCL, New Delhi lacked any objective or legally sustainable justification. The contemporaneous evidentiary matrix already available on record clearly pointed towards Fe content below 58%, leaving no discernible circumstance warranting a fresh scientific exercise. Once the representative samples had been duly analysed by the jurisdictional Customs laboratory and the results stood independently corroborated by both the Load Port and Discharge Port Test Reports as well, there existed no justification in law to discard those reports merely because they did not accord with the declaration initially furnished in the Shipping Bill or the Pre-Shipment Analysis Report.

16. Another point which merits discussion, is that the Final Assessment Order itself places reliance upon various judicial pronouncements to emphasize that, for the purpose of classification of Iron Ore Fines, evidentiary primacy must attach only to samples drawn in the presence of Customs in accordance with the procedure prescribed under the applicable BIS standards for representative sampling. The assessing officer has, in fact, categorically recorded at page 5 of the Final Assessment Order that "in case of the reports issued by CRCL, Vizag and CRCL, New Delhi, the aforesaid practice has been followed scrupulously" while conducting the analysis. Having thus accepted the procedural sanctity and scientific integrity of the report issued by CRCL, Vizag, the Revenue could not, in the same breath, have disregard the conclusions recorded therein merely because a subsequent report from CRCL, New Delhi yielded a result more congenial to its case. Such a selective appreciation of evidence, unsupported by any cogent, rational or legally

sustainable basis, is plainly arbitrary and does not adhere to the settled principles governing evaluation of evidence in quasi-judicial proceedings. The above approach, therefore, is not permissible in the eyes of law.

17. Consequently, we hold that the report of CRCL, Vizag dated 26.09.2023, constituted reliable and scientifically acceptable evidence for determination of the Fe content of the exported Iron Ore Fines, in comparison to the report of CRCL, New Delhi dated 29.11.2024, in the peculiar facts and circumstances of the case. The decision of the authorities below to disregard the said CRCL, Vizag report dated 26.09.2023, and to place exclusive reliance upon the subsequent re-test report of CRCL, New Delhi for denying the exemption available to Iron Ore Fines containing Fe below 58% and for levying export duty/cess @30% is, therefore, ex facie arbitrary, unsupported by the governing Circular and unsustainable in law. The reference made for re-testing, in the peculiar facts and circumstances of the present case, was wholly unwarranted and the consequential final assessment founded thereupon cannot be legally sustained.

18. In view of the foregoing discussion, we hold that the impugned Final Assessment Order is founded upon an erroneous appreciation of the evidence on record and a legally unsustainable reliance upon the belated re-test report of CRCL, New Delhi. The Revenue having failed to establish, by cogent, reliable and legally admissible evidence, that the exported Iron Ore Fines possessed Fe content in excess of the statutory threshold so as to attract levy of export duty/cess @30%, the very basis of the final assessment stands extinguished. The impugned

Order-in-Appeal affirming such assessment cannot, therefore, survive judicial scrutiny. Resultantly, both the impugned Order-in-Appeal as well as the Final Assessment Order are liable to be set aside. Accordingly, we set aside the impugned Order-in-Appeal as well as the Final Assessment Order, being wholly unsustainable in the eyes of law.

19. In the result, the appeal stands allowed, with consequential relief, if any, as per law.

(Order pronounced in the open court on **05.08.2026**)

Sd/-
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd