

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

No. 26, Haddows Road, Shastri Bhavan, Annexe Building, 1st Floor, Chennai – 600006

Dated: 26/12/2016

LARGER BENCH MATTER
HEARING NOTICE

Appeal No. C/88495/2014, C/86933/2014, C/87757/2014, C/88493/2014,

Appellant

JSW STEEL COATED PRODUCTS LTD.
(DEMERGED ENTITY OF JSW STEEL LTD.)
B-6, MIDC NAVAPUR ROAD,
TARAPUR BOISAR, TALUKA PALGHAR
THANE- 401501

Respondent

CC (IMP) MUMBAI, CC (EXP) MUMBAI

(C/87757/2014)

CCE, GOA

JSW STEEL LTD.
JSW CENTER, BANDRA
KURLA COMPLEX, BANDRA (E)
MUMBAI NO. 400051

1. The issue involved in the matter is discussed in the Interim Order No M/ 4724 -- 4727/15/CB dated 11/09/2015 – 09/10/2015 . The matter is now listed for hearing before Larger Bench on 16/01/2017 & 17/01/2017 and to subsequent dates, if required, at 10:30 A.M. at CESTAT, South Regional Bench, 26, Haddows Road, Shastri Bhavan Annexe Building First Floor, Chennai-600006.
2. You are hereby also directed to supply one set of appeal/ paper book to the O/o Authorised Representative, CESTAT Chennai and the Secretary, Bar Association CESTAT Chennai directly under intimation to the registry of this Tribunal well before the date of hearing.
3. Take notice that the Larger Bench case's mentioned above has been fixed for hearing on 16/01/2017 & 17/01/2017 at 10:30 AM or any subsequent date thereafter as per the cause list or as may be convenient to the Hon'ble Bench of this Tribunal before CESTAT, South Regional Bench, 26, Haddows Road, Shastri Bhavan Annexe Building First Floor, Chennai-600006.


ASSISTANT REGISTRAR

Copy to:

1. The Hon'ble Registrar - CESTAT, New Delhi.
2. Deputy Registrar/Assistant Registrar – CESTAT, New Delhi, Mumbai, Chennai, Kolkata, Ahmadabad, Bangalore, Allahabad, Chandigarh, Hyderabad (a/w Copy of Misc. Order)
3. Secretary – Bar Association, New Delhi, Mumbai, Chennai, Kolkata, Bangalore, Ahmadabad, Allahabad, Chandigarh, Hyderabad (a/w Copy of Misc. Order)
4. Commissioner (AR), CESTAT, Chennai
5. Office Copy
6. Website / Guard file.
7. Advocate/Consultant

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Nirmal Building 19th floor,
241/242, Nariman Point,
Mumbai – 400021

2. V.K. Singh

Office no. 1, Sai Pooja CHS
Near Janakalyan Bank, OM
Nagar Next to J B Nagar
Andheri (E) MUMBAI -59

For per Bench
Laxmi

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO. II

APPEAL NO. C/88495, 86933, 87757, 88493/14

[Arising out of Order-in- Original Nos.
20/2014/CAC/CC(E)/SJ/GRVI. dated 28/2/2014, No.
49/2014/CAC/CC(U)/AB/VB dated 29/4/2014 No.
50/2014/CAC/CC(U)/AB/Oil dtd 25/4/2014 passed by the
Commissioner of Customs (Import/Export), New Custom House,
Mumbai and OIO No. COMM/ADJ/CUS/03/2014-15 dated
14/3/2014 passed by the Commissioner of Customs, Goa]

JSW Steel Coated Products Ltd : Appellants
JSW Steel Ltd
JSW Steel Coated Products Ltd

VS
CC (Export) Mumbai : Respondent
CCE, Goa
CC (Import), Mumbai

Appearance

Shri. V.K. Jain, Advocate with Ms. Manya Bhardwaj, Advocate for
the Appellants.
Shri. V.K. Singh, Special Counsel for the Respondent

CORAM:
Hon'ble Mr. P.S. Pruthi, Member (Technical)
Hon'ble Mr. Ramesh Nair, Member (Judicial)



Date of hearing: 11/9/2015
Date of decision: 9/10/2015

ORDER NO. M/4724-4727/15/CB
Per : Ramesh Nair

These appeals are listed for regular hearing. However Ld.
Counsel for the appellant Shri. V.K. Jain made preliminary
submission that the issue involved in the present case is

[Signature]

classification of Coal i.e. whether it is Stern Coal or Bituminous Coal. He submits that on the identical issue in the case of *Tamil Nadu Generation and Distribution Corporation Ltd. Vs. CC [2014-TIOL-2503-CESTAT-2503-CESTAT-MAD]* reference to the Larger Bench was made due to disagreement with view taken by Coordinate Bench of CESTAT in the case of *Coastal Energy Pvt Ltd. Vs. CC[2014/310] ELT 97*. It is his submission that though certain questions of law were referred for answer by the Larger Bench in the said judgment, in the present case some more issues also to be decided by the Larger Bench therefore he proposed following question for reference to the Larger Bench:-

(a) Whether the Order of the Tribunal has the effect of obliterating the distinction between a Sub-heading and a Tariff Item while applying the criteria of calorific value limit prescribed in Sub-heading Note(2) to a Tariff Item "2701 12 00 Bituminous Coal", even though the Sub-heading Note begins by stating that the criteria prescribed therein applies only "For the purposes of Sub-heading 2701.12"?

(b) Whether the Tribunal was correct in holding that Tariff Items "2701 11 00 Anthracite" and "2701 12 00 Bituminous Coal" are to be regarded as Sub-heading by ignoring "00"(and not as tariff-items), thereby treating them as being at the same level and hence comparable with a 6 digit Sub-heading"2701 19" " other coal", and whether such finding is consistent with the statutory



definitions of "Sub heading" and "Tariff Item" in the General Rules for the Interpretation of the Customs Tariff?

(c) Whether the Tribunal was correct in accepting the Revenue's submissions that in the Customs Tariff, the number of digits and dashes invariably tally and follow a pattern, and consequently whether the existence of "—" against Tariff Items "2701 11 00 Anthracite" and "2701 12 00 Bituminous Coal" is sufficient basis for regarding the said Tariff Items as Sub-headings by ignoring "00"?

(d) Whether the Tribunal was correct in holding that Rules 2 to 5 (in particular Rule 2) of the General Rules for the interpretation of the Customs Tariff apply when the competing entries are in different headings and thereafter would not apply for deciding a case of classification of goods in a Sub-heading, even though the HSN Explanatory Notes clearly provide that all the Rules of interpretation as applicable to Headings would apply *mutatis mutandis* for the purpose of classification of goods in a Sub-Heading?

(e) Whether the Tribunal was correct in rejecting the importer's argument of redundancy of Tariff Item "2701 19 10 coking Coal" by holding that some coking coals can be non-agglomerating and can have a GCV of less than 5833 kcal/kg, but not less than 5829 kcal/kg and that the Tariff Item "2701 19 10 coking coal" would cover non agglomerating coking coal with GCV between 5829 kcal/kg to 5832 kcal/kg on m,mmf basis?

Agarwal

(f) Whether the Tribunal was correct in reaching its conclusion solely on the basis of a worksheet submitted by the importer wherein GCV of 5709 kcal/kg on moist, ash free (maf) basis was shown as equivalent to GCV of 5829 on moist, mineral matter free(m,mmf) basis, without appreciating that there was no standard or known formula for converting GCV readings on maf basis into GCV readings on m,mmf basis, and also without appreciating that sulphur was the only mineral matter which had been factored in the worksheet, whereas there are several other mineral matters also present in coal, which were required to be eliminated before arriving at the GCV on m, mmf basis?

(g) Whether the Tribunal was correct in treating Sub-heading "2701 19 other coal" as residuary covers entry by overlooking the fact that the said Sub-heading specifically covers steam coal and coking coal, which, though, falling under the generic category of Bituminous coal by rank, are actually prepared coals made suitable for use in a particular industry, as distinct from run-of-mine coals which are traded with reference to their generic ranks viz. Anthracite and Bituminous coals?

(h) Whether in the facts and circumstances of the case, the alleged classification of the goods as Bituminous Coal without following the standards prescribed in the Bureau of Indian Standards as to sampling and testing, is legal and proper in view of the judgment of the Hon'ble Supreme Court of India in Tata

[Signature]

Chemicals Ltd. Vs. Commissioner of Custom(P), Jammagar

[2015(320) ELT 45]P

2. Shri. V.K. Singh, Id. Special Counsel appearing on behalf of the Revenue made submission on merit of the questions proposed to be referred to the Larger Bench.

3. We have carefully considered the submissions made by both sides.

4. Since the issue involved is common for various importers all over India, the matter involving many appeals were referred to the Larger Bench in the matter of *Tamil Nadu Generation and Distribution Corporation Ltd(supra)*, we are of the view that, without expressing our view, the matter should be considered by Larger Bench on all the issues raised by both sides. We are therefore of the considered view, it is just and proper in the interest of justice that present matter should also be considered by the Larger Bench. We therefore direct the registry to place these appeals before the Hon'ble President to constitute larger bench to answer the question proposed by the appellants as mentioned above.

(Order pronounced in court on 9/10/2015)

SD

P.S. Pruthi
Member (Technical)
sk

SD

Ramesh Nair
Member (Judicial)