



सीमा शुल्क आयुक्त का कार्यालय
1व सीमा शुल्क गृह : पणंबूर : मंगलूर - १०

OFFICE OF THE COMMISSIONER OF CUSTOMS
NEW CUSTOM HOUSE: PANAMBUR: MANGALORE-10

सी.सं./C.No.VIII/10/18/2010 अधिर्णिया/ Adjn
क्रम सं./Sl.No. 07/2010 (ADC)

Passed on: 28.7.2010
Issued on : 30.7.2010

मूल आदेश
ORDER-IN-ORIGINAL

Passed by Shri Ajazuddin, Additional Commissioner of
Customs, Mangalore Customs, Mangalore.

उद्देशिका
P R E A M B L E

१. यह प्रति उस व्यक्ति के व्यक्तिगत उपयोग के लिए बेशुल्क दी जाती है, जिसके लिए जारी की जाती है।

1. This copy is granted free of charge for the private use of the person to whom it is issued.

२. कोई भी व्यक्ति जो इस आदेश से व्यथित है, वे इस आदेश के विरुद्ध, सीमा शुल्क और केंद्रीय उत्पाद शुल्क (अपील्स) नियम 1982 के साथ संलग्न प्रपत्र फार्म सी.ए.-1/सी.ए.-2 (द्विप्रति में) में आयुक्त (अपील्स), सीमा शुल्क, बंगलूर को अपील कर सकते हैं। इस आदेश के पावती के दो महीनों के अंदर अपील दायर कराा चाहिए। इस अपील में यायालय शुल्क स्टॉप रु. 1.62/- (रुपये एक और पैसे बासठ मात्र) लगाा चाहिए। उसके साथ मूल आदेश की दो प्रतियाँ, जिसमें से एक प्रमाणित प्रति होा चाहिए और जिसपर यायालय शुल्क नियम, 1870 के खंड मुद्दे सं. 6 में विविदिष्ट के अनुसार 2 रुपये (दो रुपये मात्र) की यायालय शुल्क स्टॉप होा चाहिए।

2. Any person deeming himself aggrieved by this order may appeal against the order in Form C.A-1/C.A-2 (in duplicate) appended to the Customs and Central Excise (Appeals) Rules,1982 to the Commissioner of Customs (Appeals), 16/1, S.P.Complex, 5th Floor, Bangalore.560027. The appeal must be filed within 60 days from the date of communication of this order. An appeal should bear a Court Fee Stamp of Rs.1.62 (Rupee One and sixty two paise only). It should be accompanied by two copies of order in original, one copy of which shall be a certified copy and must bear a court fee stamp of Rs.2/- (Rupees two only) as prescribed under Schedule I, Item 6 of the Court Fees Act 1870.

3. इस आदेश के विरुद्ध अगर कोई व्यक्ति अपील कराा चाहते हैं तो वे अपील करो के पहले लगाये गये दंड तथा माँगे गये शुल्क को भुगताा करें और अपील के साथ ऐसे भुगताा के साक्ष्य प्रस्तुत करें, त्हीं तो सीमा शुल्क अधिनियम, 1962 की धारा 129 ई के उल्लंघा के कारण अपील अस्वीकृत किया जा सकता है।

3. Any person desirous of appealing against this order shall pending the appeal, deposit the duty demanded or penalty levied thereon and produce proof of such payment along with the appeal, failing which the appeal is liable to be rejected for non-compliance of the provisions of Sec 129 E of the Customs Act 1962.

BRIEF FACTS OF THE CASE:

M/s. Daksh Minerals & Marine Private Limited, 409/ Town Centre, Andheri Kurla Road, Sakinaka, Andheri (E), Mumbai 400059 (hereinafter referred to as the "exporter" or "DMM") are engaged in the activities of export of iron ore fines through New Mangalore port to various overseas buyers. Specific intelligence was received in the Directorate of Revenue Intelligence (hereinafter referred to as "DRI") to the effect that DMM have evaded Custom duty payable on their iron ore exports effected through New Mangalore Port during the period from 13th June 2008 to December 2008 by resorting to misdeclaration of actual value and quantity shipped.

2 DRI, Mangalore issued summons dated 06.11.2009 to the exporter for production of relevant documents pertaining to the subject exports. Shri Ajith Choudhari, Manager of the exporter appeared on 18.11.2009 and furnished export documents related to their shipments effected through New Mangalore port. On scrutiny of the aforesaid documents, it was noticed that there was only one shipment of iron ore fines effected through New Mangalore port during the period from 13th June 2008 till 7th December 2008. It was further noticed that the exporter had filed with Customs, Mangalore a Shipping Bill(S/B) No. 1030616 dated 18.06.08 alongwith Invoice, Packing List, Supply/Purchase Contract pertaining to the above shipment of iron ore fines. On verification of the various documents , it was found that the base supply price of iron ore fines exported was fixed per Dry Metric Tonne (DMT) on FOB (Free On Board) basis at New Mangalore port (load port) or at port of destination (disport). Further, the price adjustment in accordance with the existence of actual Ferrous (Fe) content and other elements like phosphorous, sulphur, silica, alumina etc., in the iron ore exported was also agreed upon between the exporter and the buyers. Further, it was noticed from the concerned S/B No. 1030616 dated 18.06.08 and relevant Customs Invoice that at the time of shipment, the exporter had declared to Customs, the maximum permissible moisture allowed in the supply/purchase contract and the corresponding Dry Metric Tonne (DMT) quantity of iron ore fines exported. It is also noticed that at the time of shipment, the FOB value of the export goods was declared to Customs based on the unit supply price per DMT quantity, as agreed upon in the supply/purchase contract. It was also noticed that the export duty was paid on the basis of this FOB value declared on DMT quantity of goods arrived at by deducting maximum moisture content allowed in the supply/purchase contract from the declared wet metric tonne (WMT) quantity.

3. Investigation further revealed that the exporter had arranged assayers/surveyors at load port for carrying out sampling and analysis of iron ore fines exported. From the survey reports given by these assayers/surveyors subsequent to shipment, it was found

that the DMT quantity of iron ore shipped was actually arrived at by deducting the actual moisture content present in the iron ore fines, which was determined by methodical sampling and analysis. The actual moisture content so determined by the assayers/surveyors after testing the samples of goods shipped was lesser than the moisture content declared to Customs at the time of shipment. The appointed assayers/surveyors have issued certificates of quality and certificates of quantity in respect of the exports of iron ore fines made by the exporter during the relevant period. The exporter raised commercial invoice on their overseas buyers for receipt of payment of export sale value that is applicable on the actual DMT quantity reported by the assayers/surveyors.

4. In other words, the actual export price/value was arrived at in the commercial invoice on the actual DMT quantity of iron ore fines shipped at load port. Further, the actual export value of iron ore fines exported was also arrived at by the exporter in the commercial invoice after considering and making necessary price adjustments towards presence of actual Fe content and existence of other elements as impurities beyond permissible limits. The overseas buyer has accordingly remitted the amount (actual price of the goods) raised in the commercial invoice. Thus, the exporter actually realized higher amount (being actual value of the goods exported) than that declared to Customs at the time of shipment for the purpose of assessment to duty. It appeared that the exporter has misdeclared to Customs about the actual DMT quantity of iron ore exported and the actual export value of the said goods thereof in order to evade payment of appropriate customs duty. Further, it appeared that for the purpose of evasion of export duty, the exporter suppressed from Customs documents like certificates of sampling and analysis issued by the surveyors/assayers after shipment, commercial invoice raised after shipment of goods on the overseas buyer for realization of export sale proceeds and the bank realization certificates (BRC) which indicated actual amount realized towards the goods exported.

5. The exporter filed a S/B No.1030616 dated 18-06-2008 at Mangalore Customs for the export of 22825 WMT of iron ore fines of Fe 63% per vessel MV PORT MOUTON through M/s Muneer Enterprises, Masjid Ilah Compound, Hampi Road, Hospet on a third party export basis to the buyer M/s. Concord Fortune Minerals Ltd for delivery in China. The export was to be made under Contract No.DMMPL/112-5/2008 dated 26-05-2007. In this regard, DMM through M/s. Muneer Enterprises had apparently filed an Invoice No.EXP/02/07-08 dated 18-06-2008 and connected packing list wherein dry weight quantity of the export goods (iron ore fines) was shown as 20,999 DMT by deducting 8% moisture (1826 MT) from the gross wet quantity of the said goods declared to be 22,825 WMT (Wet Metric Tonne). The FOB value shown in the said Invoice was US \$ (US

Dollors) 2,960,859 for 20,999 DMT @ US \$ 141 per DMT. The said export goods were assessed to duty accordingly by Customs and consequently, the exporter paid an export duty of Rs.1,64,13,458/=.

6. The aforesaid shipment was subsequently completed on 24-06-2008 per vessel MV PORT MOUTON. On completion of the shipment, a Certificate of Quality No.QSS/02/01/541 dated 25-06-2008 and a Certificate of Weight No.QSS/02/01/542 dated 25-06-2008 were issued by the appointed assayers M/s. Quality Service & Solutions (Goa) wherein the total weight of the goods shipped was reported to be 22,825 WMT and the moisture content in the said goods was reported to be 6.26%. Based on the aforesaid certificates issued by the assayers, the exporter DMM thereafter raised a final invoice No.EXP.02/08.09 dated 26-06-2008 on the buyer M/s. Conford Fortune Minerals Limited for payment of an amount of US \$ 29,94,023.88 towards shipment of 21,396.155 DMT of iron ore fines arrived at by deducting actual moisture of 6.26% from the quantity shipped. The exporter on 26.06.2008 realized the said final invoice amount.

7. However, the fact of receipt of this higher payment of US \$ 29,94,023.88 against the declared amount of US \$ 29,60,859 was not brought to the notice of Customs for reassessment to duty resulting in short levy. The said documents viz., final invoice No. No.EXP.02/08.09 dated 26-06-2008 and Certificate of Quality No.QSS/02/01/541 dated 25-06-2008 indicating actual export value of the goods and indicating actual moisture content (i.e., 6.26% as against declared 8%) issued by the appointed assayers M/s. Quality Services & Solutions (Goa) at load port wherein the reported moisture content of 6.26%, were suppressed from Customs with an intent to evade duty.

8. During the course of investigation, the statements of following persons were recorded under Section 108 of the Customs Act, 1962(hereinafter referred to as the said Act).

- a) Shri Ajith Choudhari, Manager, DMM, Mumbai on 18.11.2009.
- b) Shri Vasanth K, Shipping Assistant, M/s. Alvares & Thomas, Custom House Agent, Mangalore on 2.12.2009.

9. Shri Ajit Choudhari, Manager, DMM, Mumbai in his statement dated 18.11.2009, inter alia, stated that:

- he has been authorised by Shri Nimesh Vora, Director of DMM to appear and give evidence

- he has been working in DMM for the last 15 years; as Manager he handles various incidental work pertaining to iron ore exports including customs documentation;
- some of their overseas buyers are Concord Fortune Minerals, SK Resources, Cargill Ltd, Singapore etc
- DMM is engaged in trading in iron ore.
- In New Mangalore Port, they hired the plots (place of storage of iron ore) at New Mangalore Port from M/s Muneer Enterprises, Hospet, who already had obtained the plots on lease. In the Customs Invoice and the Shipping Bill, the exporter's name is mentioned as Muneer Enterprises, as the plot was in their name. All transaction with the buyers abroad and duty payment was done by DMM.
- Before berthing of the vessel various shipping documents like Customs Invoice, packing list, and contract are prepared in their company and forwarded to C&F Agent of the respective ports along with Letter of Credit. In Mangalore M/s. Alvares & Thomas are their handling/C&F Agent.
- Based on these documents, M/s. Alvares & Thomas prepare the Annexure to file the shipping bill with Customs at Mangalore. Thereafter, export duty is remitted based on the assessment by Customs and shipment is done to the buyer.
- The quality and quantity of the iron ore shipped is determined by survey conducted at respective ports by authorised independent surveyors as per the contracts entered with the buyers. The quality and quantity of iron ore supplied is finally arrived at based on the survey conducted. The payment of the cargo shipped is received based on the final quality report.
- The final invoice prepared would indicate the final sale price of the goods giving adjustments and corrections towards moisture, Fe, presence of other elements like Silica etc.
- While filing the shipping bills in Customs, quantity to be shipped and maximum moisture content is declared as provided in the contract and arrive at dry metric tonne (DMT) weight of the cargo. The FOB value of the iron ore is declared in the shipping bill based on the DMT and the goods are assessed to duty by Customs based on the declared value of the cargo.
- Since the final price of the iron ore shipped is arrived at finally based on the quality report, there is a variation of value declared initially with Customs.
- DMM did not declare the actual transaction value to Customs and also did not furnish the final invoice to the Customs.
- They are aware that duty is levied on the basis of value of the goods with effect from June 2008. However, the final invoices indicating actual price of the goods were not furnished to Customs.

Accordingly, differential duty liability for the shipments effected through New Mangalore port would be paid.

10. Shri Vasanth, Shipping Assistant, M/s. Alvares & Thomas, Custom House Agent [CHA], Mangalore in his statement dated 2.12.2009, inter alia, stated that:

- he is working with M/s. Alvares & Thomas, Mangalore for the last 22 years. He is a holder of G card issued by Customs.
- they handle documentation work relating to their clients' shipments of iron ore export; DMM is one such client;
- while filing relevant documents like invoice, packing list, shipping contract in Customs for assessment of iron ore under export, the quantity of the cargo to be shipped mentioned in the invoice and packing list is only an estimate since the exact quantity shipped would be known only after final survey is conducted after loading of the export cargo into the vessel.
- the moisture content of the iron ore and the Fe content declared therein in the invoice and packing list is also an estimate since the exact moisture and its actual Fe content would be known after testing by the appointed surveyors after the shipment.
- the assessment is made by Customs based on the quantity and quality declared by the exporters to Customs and export duty is paid accordingly. However, the final quantity shipped would normally be in variance to the quantity declared initially in the concerned customs invoice and that the final value for realization of actual sale proceeds by the exporters for the good shipped would also be in variance to the total value of the goods declared to the Customs. The final value is normally in variance to the declared value because the unit value of the goods shipped is in terms of DMT (dry metric ton), which depends on the actual moisture content. Further, the actual Fe content and other elements (impurities) in excess or short to that allowed in the shipping contract also plays an important role in the determination of final value.
- however, the final value of the goods shipped i.e., sale proceeds received is not declared to Customs. The exporters do not give the final survey report indicating quality specifications of the goods shipped to the CHA since the surveyors are appointed directly by the exporters. Similarly, the final commercial invoice raised by the exporter to the buyer indicating final value of the goods shipped is also not given.
- he was asked as to why he made no efforts to collect the final invoice and survey report from the exporters and furnish the same to customs so that proper levy is made, being a CHA conversant with the assessment procedure. In reply, he stated that they have only followed the practice adopted at Mangalore Customs where

duty on export of iron ore is collected only based on the declared quantity and value in the Customs invoice filed at the time of shipment.

- he understood that they are at fault inasmuch as they had to educate the exporters to furnish the final survey report and final commercial invoice indicating actual quantity shipped in terms of DMT and also the actual value to Customs for assessment subsequent to shipment, for proper levy of duty.

11. During the course of investigation, DMM paid an amount of Rs.1,83,849.00 towards their duty liability and Rs.31,169.00 towards interest totalling to Rs.2,15,018.00 vide challan no.1044 dated 19.11.2009.

12. DRI sought details of payments received towards the shipments under investigation from the bankers concerned vide letters detailed below.

Sl No.	DRI letter ref	Reply sent by
1	DRI/MRU/INVN/DMM/74/2009 dated 20.11.2009, 11.12.2009, addressed to The Manager, Union Bank of India, Mumbai-3.	Union Bank of India, Abdul Rehman Street Branch, Mumbai vide their letter dated 13.12.2009.

13. DRI Vide letter F No. DRI/MRU/INVN/DMM/74/2009 dated 22.2.2010 desired to know from Custom House Mangalore whether the subject shipping bill No. 1030616 dated 18-06-2008 have been finalised or not. In reply, the Deputy Commissioner of Customs vide letter S-02/15/2009 Exp dated 23.02.2010 informed that the test bond executed by the export against the said shipping bill No. 1030616 dated 18-06-2008 has been cancelled and thus concluded the assessment.

14. It appeared that in the subject shipment, the exporter had raised more than one invoice showing different quantity and value i.e., one indicating lesser DMT quantity and lesser value for Customs (Customs Invoice) purpose and the other invoice (Commercial Invoice) showing higher DMT quantity and value for receipt of actual payments. The second invoice indicating the higher value i.e., the actual transaction value of the goods exported were not furnished to Customs . On comparison of the actual remittance amount received in respect of the subject shipment by the exporter from their overseas buyer with the corresponding invoice value declared in the relevant

shipping bill No. 1030616 dated 18-06-2008 filed with Customs, it is noticed that for the purpose of assessment to duty, DMM had declared to Customs a total invoice value of US \$ 2960859 (Rs.12,58,36,507.50) as against the corresponding actual amount of US \$ 2994023.88 (Rs.12,72,46,014.90) . Accordingly, it appeared that the exporter has undervalued the subject export goods to the extent of Rs.14,09,507.40 (as detailed in the Annexure to this notice) in order to evade payment of Customs duty, by resorting to willful misdeclaration to Customs about the actual DMT quantity of the goods shipped and also its actual value and by suppression of relevant material facts to Customs about the existence of parallel invoice. It appears that on account of this undervaluation of the exported goods to the extent of Rs.14,09,507.40, export duty amounting to Rs.1,83,849.00 has been short levied.

15. It appeared that in respect of the subject shipment, the actual value of the goods received by the exporter from their overseas buyer would constitute the transaction value under Rule 2(1)(b) of the Customs Valuation Rules, 2007 read with sub-section (1) of section 14 of the of the said Act. Accordingly, the goods exported in respect of the subject shipment do not correspond in respect of quantity, value and in other material particulars with the entry made under the said Act and are in excess of those included in the entry made under the said Act resulting in improper exportation and thereby, rendering the subject goods liable to confiscation under Section 113(h) and 113(i) of the said Act.

16. Thus, it appeared that the said duty amount of Rs.1,83,849.00 is payable by/recoverable from the said exporter in terms of proviso to Section 28(1) of the said Act. Further, it appears that the exporter is also liable to pay the applicable interest of Rs 31,169/- under section 28AB of the said Act on the short levied duty amount of Rs1,83,849.00. It further appeared that by their acts of omission and commission the exporters have rendered themselves liable to penalty under Section 114A and/or Section 114(ii) of the said Act. Further, the exporter has knowingly given false declarations in respect of quantity and value of the subject goods in the concerned export documents furnished to Customs and hence, they appear to be liable to penalty under Section 114AA of the said Act.

17. Therefore a show cause notice No. DRI/MRU/INVN/DMM/74/2009 dtd 23-04-2010 was issued to , M/s. Daksh Minerals & Marine Private Limited, 409/ Town Centre, Andheri Kurla Road, Sakinaka, Andheri (E), Mumbai 400059 directing them to show cause to the Additional Commissioner of Customs, New Custom House, Panambur, Mangalore-575010 within 30 days of receipt of this notice as to why:

i) the declared FOB value of the goods i.e., 20,999 DMT iron ore fines exported vide subject shipping bill No. 1030616 dated 18-06-2008

- amounting to USD 29,60,859 (Rs.12,58,36,508/- (Rupees Twelve Crore Fifty Eight Lakhs Thirty Six Thousand Five Hundred and Eight Only) should not be re determined at 21,396.16 DMT iron ore fines amounting to USD 29,94,023.88 (Rs.12,72,46,015.00) (Rupees Twelve Crore Seventy Two Lakhs Forty Six Thousand and Fifteen only) by adopting the actual quantity of 21,396.16 DMT exported and export value of the said goods amounting to USD 29,94,023.88 (Rs.12,72,46,015/-) as the true and actual transaction value in terms of Rule 3(1) of the Customs Valuation (Determination of Price of Exported Goods) Rules, 2007 read with Rule 2(1)(b) ibid and sub-section (1) of Section 14 of the said Act;
- ii) the aforesaid 21,396.16 DMT iron ore fines should not be held/rendered liable to confiscation under Section 113(h) and 113(i) of the said Act for being improperly exported ;
 - iii) an amount of Rs.1,83,849.00 (Rupees One lakh Eighty Three Thousand Eight Hundred and Forty Nine Only) being the export duty short paid owing to re determination of value of the subject exported goods referred above should not be demanded and recovered from them in terms of proviso to Section 28(1) of the said Act;
 - iv) an amount of Rs.31,169.00 (Rupees Thirty One Thousand One Hundred and Sixty Nine only), being the interest payable at applicable rates on the duty short paid referred above at Sl. No.(iii) above should not be demanded from them under Section 28AB of the said Act;
 - v) penalty under Section 114A and/or Section 114(ii) of the said Act, should not be imposed on them for their acts of omission and commission by which the exported goods referred above at Sl. No.(i) are rendered liable to confiscation under Section 113(h) and 113(i) of the said Act;
 - vi) penalty under Section 114AA of the said Act should not be imposed on them for furnishing false declarations in the export documents filed in respect of the subject goods referred above at Sl. No.(i); and
 - vii) an amount of Rs.2,15,018.00 (Rupees Two lakhs Fifteen Thousand and Eighteen only) paid by them, vide TR-6 challan No.1044/19.11.09, during investigation should not be appropriated and adjusted against their duty and interest liability referred above.

DEFENSE

18. M/s Daksh Minerals & Marine Pvt Ltd, Mumbai vide their letter dated 2.6.2010 submitted their reply as follows:

(i) The allegation made in the show cause notice that they had intentionally evaded the customs duty by way of misdeclaring the actual quantity & value of the export goods is baseless and not according to the actual facts of the case. The shipping bill and the related other customs documents are to be filed with Customs before arrival of the vessel as they have to keep

ready the customs formalities before loading of the cargo into the vessel. In this case the subject shipping bill was filed with Customs on 18.6.2010 and during that time they had no option rather declared the maximum moisture content as per the contract and arrive the DMT quantity of the cargo shipped.

(ii) The sampling and analysis of the cargo exported was done by their authorized assayers M/s Quality Service & Solutions (GOA) only from 19th June 2008 till 24th June 2008 as can be seen from the their reports and the said certificates of quality and quantity were issued by them only on 25.6.2008. Therefore it is not possible on any exporter to declare the actual quantity and value in the relevant shipping bill during the time of shipment. Hence, the contention alleged in the subject show cause notice that they had misdeclared the actual quantity and value in the relevant shipping bill is not correct and cannot be acceptable.

(iii) Further we like to mention here that till 13.6.2008 export of iron ore attract only specific rate @Rs.50/- to Rs.300/- as per the Fe content and during that time also they had followed the same procedure as done in the present consignment. Had the department sought these documents like final invoice, certificates of quality & quantity issued by the assayers we could have furnished at the time of final assessment itself and paid the appropriate duty if any.

(iv) Immediately on the knowledge that they had to furnish the relevant export documents like final invoice, certificates of quality & quantity issued by the assayers and other particulars, they had complied the request and made good the differential duty alongiwth applicable interest amounting to Rs.2,15,,018/- vide TR 6 challan No. 1044 dtd 19.11.2009. From the above, it is very clear that they had no intention to evade any amount due to the government and they are prompt in fulfilling the requisite dues to the exchequer.

(v) Their company had complied all requisite legal dues before receipt of the show cause notice itself and they had no intention whatsoever to evade any customs duty and hence they requested to take lenient view in the matter and drop the entire proceedings. Since they had paid the entire duty alongwith interest amount before issuance of show cause notice and they had not suppressed or mis stated any details/documents from the department intentionally, they are not liable to any penal action .

They have requested to decide the case without personal hearing in the matter.

FINDINGS

I have gone through the records of the case, and proceed to decide the case.

19. M/s Daksh Minerals & Marine Pvt Ltd., Mumbai filed Shipping No. No.1030616 dated 18-06-2008 for export of Iron Ore Fines from New Mangalore Port. The quantity declared was **22825 WMT - 20999 DMT** and FOB value declared was US\$ 2,960,859 (Rs.12,58,36,507.50). However, on the basis of intelligence, that the exporter misdeclared quantity as well as value of the consignment to evade payment of export duty, the case was investigated. During investigation, it has found that the actual quantity exported was 21,396.155 DMT and FOB value whereof was US\$ 2994023.88 (Rs.12,72,46,014.90).

20. Misdeclaration of quantity and value of export consignment is established by the fact of the case. The exporter has also accepted the finding of the investigations and has paid the differential duty alongwith the interest.

21. The quantity and FOB value of the export consignment is liable to be redetermined as 21396.16 MT and USD 29,94,023.88 (Rs.12,72,46,015/-) in terms of Rule 3(1) of the Customs Valuation (Determination of Price of Exported Goods) Rules, 2007 read with Rule 2(1)(b) ibid and sub-section (1) of Section 14 of the said Act.

22. The entire export consignment is, consequently, liable to confiscation under Section 113(h) and 113(i) of the said Act. However, the goods are not available for confiscation.

23. The exporter is liable to pay differential export duty amounting to Rs.1,83,849.00 (Rupees One lakh Eighty Three Thousand Eight Hundred and Forty Nine Only), under section 28(1) of the said Act alongwith interest under Section 28 AB of the said Act.

24. From the facts of the case, it is apparent that the exporter suppressed the fact of the test report showing actual moisture content and also the final commercial invoice showing actual quantity and FOB value of the consignment. The said test was got done by the exporter through M/s Quality Service & Solutions (Goa), at the behest of their buyers. The Customs had no knowledge of such test report. Therefore, the exporter's argument that had Customs asked for test report/final invoice etc., they could have furnished the same, does not carry any weight. At the relevant time, the Department did not test the moisture content of the Iron Ore consignment and the declaration given by the exporter was relied upon for the purpose of assessment. Hence, the exporter is liable to penalty under Section 114A of the said Act.

25. However, as the actual dry weight of Iron Ore and actual FOB value thereof are not ascertainable at the time of filing the Shipping Bill, it cannot be said that the exporter knowingly or intentionally made false declaration before Customs at the time of filing the shipping bill. Therefore, Section 114 AA of the said Act is not applicable to the facts of the present case.

In view of the above I pass the following order.

ORDER

- (i) The FOB value of the goods exported under S.B No.1030616 dated 18-06-2008 is hereby redetermined as US \$ 2994023.88 (Rs.12,72,46,014.90) under Rule 3(1) of the Customs Valuation (Determination of Price of Exported Goods) Rules, 2007 read with Rule 2(1)(b) ibid and sub-section (1) of Section 14 of the said Act.
- (ii) The export consignment is held liable to confiscation under Section 113 (h) and 113(i) of the said Act; however, the goods are not available for confiscation
- (iii) Demand of export duty amounting to Rs. 1,83,849.00 (Rupees One lakh Eighty Three Thousand Eight Hundred and Forty Nine Only), is confirmed under section 28(1) of the said Act, alongwith interest under section 28AB of the said Act
- (iv) The amount of Rs. 2,15,018 (Rupees Two lakhs Fifteen Thousand Eighteen only) paid by the exporter towards duty and interest mentioned at (iii) above, is hereby appropriated.
- (v) I impose penalty of Rs. 215018/(Rupees Two lakhs Fifteen Thousand Eighteen only) on M/s M/s Daksh Minerals & Marine Pvt Limited ,Mumbai under Section 114A of the said Act
- (vi) Section 114AA of the said Act, is not applicable to the facts of the case.

The show cause notice No.DRI/MRU/INVN/DMM/74/2009 dtd 23-04-2010 is hereby disposed of, accordingly.

(AJAZUDDIN)
ADDITIONAL COMMISSIONER

To
M/s Daksh Minerals & Marine Pvt Limited
409/Town Centre,Andheri Kurla Road
Sakinaka,Andheri East, **Mumbai 400 059**

RPAD

Copy submitted to:

1. The Commissioner of Customs, Review Section, New Customs House, Panambur, Mangalore - 575 101.
2. The Additional Director General, Directorate of Revenue Intelligence, No. 503, Rajarajeshwari Krupa, 3rd A Main Road, OMBR Layout, Banswadi, Bangalore – 560 043.
3. The Deputy Director, Directorate of Revenue Intelligence, Regional Unit, Bharathi Bhavan, Bijai Church Road, Bijai, Mangalore – 575 004.