CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH – COURT NO. 03

Customs Appeal No. 13559 of 2014-DB
[Arising out of OIO-17-COMMR-O&A-DRI-2014 passed by Commissioner of CUSTOMS-AHMEDABAD]

M/s. Suncity Strips & Tubes P Ltd ……..**Appellant**
Sp-864, Phase-Iv, Boranada Ind Area,
JODHPUR, RAJASTHAN.

VERSUS

C.C.-Ahmedabad **………Respondent**
Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

APPEARANCE:
Shri. O.P. Agarwal (C.A.) for the Appellant
Smt. Nitina Nagori, Authorized representative for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, Member (JUDICIAL)
HON'BLE MR. RAJU, Member (TECHNICAL)

FINAL ORDER NO. A/ 11470 /2019

DATE OF HEARING:05.04.2019
DATE OF DECISION:05.08.2019

RAJU

This appeal has been filed by M/s Suncity Strips and Tubes (P) Ltd. against confirmation of demand of customs duty, change of classification, imposition of redemption fine on provisionally released goods, interest and imposition of penalty under Section 1129a) of the Customs Act, 1962.

2. Ld. Counsel pointed out that the appellants are manufacturer of SS Pipes and Tubes and used SS Fold Rolls Coils of prime quality which are imported by them and also procured from domestic market. In case of 5 consignments imported by them they filed 5 bills of entries all dated 07.05.2013 for import of 369.206 MT of prime quality SS CR Coil of grade 201 and 304-Ex-stock of various widths in 14 containers and claimed exemption from duty under Notification 12/2012-Cus dated 17.03.2012 (Sr. No. 330) which exempts prime quality SS CR coils. Revenue alleged that the goods imported by them are not prime

quality and denied the exemption and demanded differential duty besides confiscating the provisionally released goods and imposing fine in view of confiscation, penalty was also imposed. However in case of bill of entry No. 2064781 no discrepancy was found and hence no demand or fine was imposed. Ld. Counsel pointed out that Revenue alleged that the goods are not of prime quality on the following grounds.

a) Width of imported coils in respect of 4 BOEs (in 12 containers) being less than 600 mm is classifiable under Ch. 72202090 and not under 72193390 so not eligible for exemption under notification No. 12/2012-Cus dated 17.03.2012.
b) Unit weight of each of the imported coil was less than 3MT, therefore, as per guidelines issued by the Ministry of Steel on their Website, such goods are 'second and defective' and not Prime Quality.
c) Benefit of Standing Order (SO) No. 62/2009 dated 21.12.2009 issued by Commissioner of Customs (Import) JNCH, Nhava Sheva has not been extended on the grounds that Mills Test Certificates (MTC) was not accompanied with consignment in respect of each of the coils.
d) On the basis of above, demands of differential duty in respect of goods imported vide 4 BOE out of 5 BOE have been confirmed with interest, fine and penalty. (Annexure-B-1 of SCN at Page No. 54 of Appeal)
e) Differential demand of Rs. 66,40,580/- has also been confirmed after denying exemption in respect of 1424.560 MT of SS Coils imported vide 14 BOR in the past, with interest and penalty but without confiscation as goods were not available, on the grounds (Page No. 186 of appeal Para 14) that net weight of each coil was less than 3 MT- Annexure B-2 SCN at Page No. 55 of appeal.

2.1 Ld. Counsel argued that the differences between prime quality and second/ defective is that the prime quality are without any manufacturing defects while the second/ defective goods are produced of non-standard dimensions or are downgraded products like products having some defects. He argued that in their case there are no defects and the goods are not of non-standard dimensions. The goods were of homogenous quality with proper levels of manufacturers showing the quality and dimensions of the manufacturer. He pointed out that it has been alleged that since the weight of each coil is less then 3MT they are not of prime quality. He pointed out that even in the appellants case invoice and packing list are available to verify the claim of the quality of the product. The appellant have also submitted MTC in respect of each consignments. He pointed out that even as per exemption report the grade, thickness, net weight tallied with the invoice and the packing list and the test certificate. He pointed out their goods are Ex-stock as is clear from the invoice/ packing list and the standing order trades Ex-stocks as prime materials. He relied on the decision of Tribunal in case of Sabari Exim (P) Ltd. 2013 (295) ELT 458 which was upheld by Hon'ble High Court of Madras reported at 2014 (310) ELT A92 (MAD). He also relied on the decision of Aneri Steels Pvt. Ltd. 2013-TIOL-1070-CESTAT-MUM. He also point out that no evidence has been produced by Revenue to support it claim that the goods are not of prime quality. He pointed out that no expert opinion or chemical examiner report has obtained by Revenue. He pointed out that though samples were collected by Revenue from each container but no report has been relied upon by the Revenue. He also pointed out that Standing Order are like trade notice issued by Commissionerate to bring uniform in assessment and the Standing Order issued by one Customs House are binding on other customs house. He pointed out that Revenue has attempted to change the classification of goods from 7219 to 7220 is of no purpose as both the headings are covered in the said notification.

2.2 He argued that demand in respect of past consignments has also been raised. He pointed out that no such demand can be raised as at the material time they had filed bill of entry and the same were assessed after loading the value to the value of the prime materials. He argued that at the material time of import of past consignments also were examined. He argued that there is no evidence that the goods imported by them in the past were of second/ defective quality.

2.3 He further pointed out that a major part of the demand relates to CVD and the same is available as credit to the appellant thus the demand is largely Revenue neutral.

3. Ld. AR relies on the impugned order. He also relied on the decision of the Tribunal in the case of Ram Steel Rolling & Forging Mills 2006 (204) ELT 87 (Tri. Mum.) to assert that the guidelines of Ministry of Steel cannot be brush aside.

4. We have gone though rival submissions. We find that the Revenue's allegation is largely based on the fact that width of the material is less than 600 MM, weight of each coil is less than 3 MT and the fact that MTC given is not coil wise, a general MTC. The stand of the Revenue is largely based on Standing Order No. 62/2009 issued by Jawahar Lal Nehru Customs House, Nhava Sheva. In the said Standing Order following has been prescribed.

> Instances of mis-declaration of description have been noticed in the recent past in respect of 'steel and stainless steel flat products' (sheets/strips/coils/plates etc.) wherein either 'prime' goods are being mis-described as 'non-prime' or 'non-prime as prime'. Although the volume of imports of **non-prime steel and stainless steel flat products** is quite high through this Port, but it is noticed that there were no specific guidelines/instructions on identification, examination and assessment of 'non-prime steel and stainless flat products' so as to have a check on the mis-declaration. Further, it is seen that various 'terminologies', for **prime/non-prime goods**, are used by steel trade and industry or declared by the importers in the Bills of Entry and the same can be broadly grouped as:-

Sr. No.	Category	Terminology/description
1	Prime	'Ex-Stock', 'Stock Lot', 'Prime Excess', 'Surplus Stock', 'Mill Excess', 'Over-rolls', 'Left-Overs' etc.
2	Non-Prime	'Seconds & Defective' or 'Seconds', 'Secondary', 'Second Grade', 'Second Choice', 'Third Choice' , 'Defectuous' etc.

> 2. The first category of 'Prime steel/stainless steel flat product' basically covers prime products except that they are sold by Steel Manufacturers/ Suppliers at lower rates/prices (or on discounts) when compared to prime goods. These goods are generally shipped in varying quality, thickness, width and length. Hence, the goods of same size and thickness or of homogeneous dimensions can not be regarded as "Stock Lot/ Ex-Stock". It, therefore, follows that the main criteria for identifying these goods has been that the consignments should be presented in mixed variety, size and thickness, that too, in small quantities supported by Manufacturer's Invoice or Mill Test Certificate (MTC) . These goods, for all practical purpose, are traded or sold at par with prime goods except for price consideration.
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> 3. In respect of second category of 'non-prime steel/stainless steel flat product' (i.e. 'Seconds & Defective' or 'Seconds', 'Secondary', 'Second Grade', 'Second Choice', 'Third Choice', 'Defectuous' etc.), there is no laid down criteria or definition for classifying a given product or products on the basis of its/their actual characteristics. The non-prime (Seconds & Defective) steel products may be defined as (i) Products of non-standard dimensions and (ii) Down-graded products.
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> 3(i) These Products are sold and delivered in different or heterogeneous formats with **no guarantee or indication of**

quality. These consignments are often not accompanied with MTC. However, it is to be ensured that the dimensions must be given on the packing list by the importer at the time of examination to enable the heterogeneity of the shipment to be confirmed.

3(ii) The Down-graded Products :-means iron and steel products having (a) surface defects and (a) internal faults. The most common 'surface defects' are 'roll marks', 'visible scratches', 'rust spots', 'scabs', 'scruff beads', 'bran, dirt and excessive oil', 'dents', 'bents', 'pinholes', 'fold edges', 'bent corners', 'mill grease', 'streaks', 'lamination and sand spots', 'scruff beads', 'transit rub marks', 'indentation', 'blisters', 'oil patches' etc. The importers are required to declare or specify, for the examination and assessment purpose on the Bill of Entry, the 'non-prime' nature of the goods as 'seconds or defective' goods. The main types of 'surface defects' are briefly described as under:

1. Blister……….
2. Split ends/ lamination………..
3. Scabs……….
4. Craks…………
5. Waviness/ buckling
6. Notched edge/cracked edge/ edge burrs………..
7. Spoilt edge………
8. Seams………
9. Vocalization/ Ovality………
10. Beading………
11. Straightness and profile……….
12. Annealing halo………..
13. Rust……….

4.1 It is seen that the objections raised by the Revenue are not supported by the Standing Order. In the instant case, the MTC has been produced. There is no requirement in the Standing Order that the MTC should be coil wise. The Standing Order clearly recognize the prime goods can be shipped in varying quality, thickness, width and length. It recognize that goods of same size of same thickness are of same homogeneous dimension cannot be regarded as 'Stock Lot/Ex-stock'. It clearly states that the main criteria for identifying the goods has been that consignment should be presented in mixed variety, size and thickness, that too in small quantity supported by manufacturer, Invoice or Mill Test Certificate. The Standing Order recognizes that these goods for all practical purposes are traded or sold at par with prime goods except for price consideration. In the instant case, the invoice and mill test certificate has been produced and goods are uniform cross section. The Standing Order does not in any way suggests that coils weighing less than 3MT cannot be treated as prime products.

5. Revenue has also relied on the Ministry of Steel Guidelines. The guidelines of Ministry of Steel prescribe that in respect of coil roll

(coated, non-coated, electrical) sheet/ strip/ coil, CR Sheets, including electrical sheet and all qualities of coated sheet (galvanized and electro galvanized, aluminized, tin plated, chrome-plated, pre-painted and lead-coated) in mixed non-homogeneous bundles with a unit weight of less than three tonnes, or in coils or less than three tonnes prescribe following as product of non-standard dimensions. We find that the above guidelines are at variance with the standing order. While the SO recognizes mixed lot at prime quality. These guidelines describe them as 'Non Standard' product. Even these guidelines do not describe these as 'Seconds and defective'.

6. In view of above, we find merit in the appeal and the same is allowed.

(Order pronounced in the open court on 05.08.2019)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

Neha