Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Customs Appeal No.190 of 2011

(Arising out of OIA-37-2011-CUS-COMMR-A--KDL passed by Commissioner of CUSTOMS-KANDLA)

M/s. Hans Industries Ltd ....**Appellant**
Survey No. 107/8/9,
Sihor Ghanghali Road,
Bhavnagar, Gujarat

VERSUS

C.C., Kandla ....**Respondent**
Custom House,
Near Balaji Temple,
Kandala, Gujarat-370210

APPEARANCE:
None appeared for the Appellant
Shri. S. N. Gohil, Superintendent (AR) for the Respondent

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

Final Order No. A/ 10308 /2020

DATE OF HEARING: 06.01.2020
DATE OF DECISION: 28.01.2020

RAMESH NAIR

The brief facts of the case are that the appellant M/s. Hans Industries Pvt. Ltd. filed a Bill of Entry No. 270176 dated 29.12.2008 through their Customs House Agent for clearance of 126.085 Metric Tons & imported LMS Bundles and Heavy Melting Scrap having assessable value of Rs. 17,42,202.17. They classified the goods under CTH 72044900 of the Customs Tariff Act, 1975 claiming nil rate of basic customs duty. During the course of examination of the said goods it was found that the said imported cargo contained 58.280 Metric Tons "HR Side Cut Trimmings" mixed with 67.805 Metric Tons of LMS Bundles and Heavy Melting Scrap.

2. The case of the department is that as per Customs Tariff, "HR Side Cut Trimmings" are classifiable under CTH 72044100 which specifically applies to "Trimmings, Savings, Clips, Milling Waste, Saw Dust, Filing, Trimmings and Stampings whether or not in Bundles". The goods falling under the said CTH

72044100 are chargeable to BCD @ 5%. On the other hand HMS falling under Customs Tariff Heading 72044900 is chargeable nil rate of BCD. Thus the importer has mis-declared the description of the consignment in order to evade applicable the Basic Custom Duty. It was also alleged that due to mis-declaration the value was also wrongly declared, therefore the transaction value for the subject goods is also liable for rejection. Accordingly, it was proposed the value of imported goods should be USD 475 CIF PMT as against declared value of @ US. $ 270/-PMT, on the basis of contemporaneous import price of "HR Side Trimmings". A Show Cause Notice was issued, wherein it was proposed to confiscate the alleged mis-declared goods of 58.280 metric tons "HR Side Cut Trimmings", to imposed penalty under section 112(a) of the Customs Act, 1962 and to reassess the mis-declared goods i.e. 58.280 Mts. on the rate of 475 USD per Metric Tons. The adjudicating authority confirmed the charges proposed in the Show Cause Notice and imposed the fine of Rs. 4 lakhs penalty of Rs. 2 Lakhs and ordered for reassessment @ 475 USD PMT. Being aggrieved by the order of the adjudicating authority the appellant filed appeal before the commissioner (Appeals), who except modification in redemption fine and penalty reducing fine to Rs. 3 lakhs and penalty to Rs. 1,50,000/-, rejected the appeal, therefore the present appeal.

3. None appeared on behalf of the appellant.

4. Shri. S. N. Gohil, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order. He submits that "HR Side cutting" is clearly covered under CTH 72044100 and leviable to Basic Custom Duty @ 5%. Therefore, the appellant have clearly mis-declared the goods under 72044900 with intention to evade Custom Duty. Therefore the goods were rightly confiscated. He relied upon the following Judgments.

- 2018 (363) ELT 708 (Tri-Chan) - C G Steel Rolling Mills Vs. CCE, Ludhiana
- 2009 (242) ELT 227 (Tri-Del) – Natwar Steel P Ltd Vs. CC, New Delhi
- 2002 (144) ELT 574 (Tri-Mum)- CC, Mumbai Vs. Multimetal Ltd
- 2003 (151) ELT A309- Multimetals Ltd Vs. Commissioner
- 2005 (188) ELT 510 (Tri-Chennai)- Ashok Megnetics Ltd Vs. CC, Chennai
- 2009 (235) ELT 229 (Ker)- CC Vs. P V Ukkru International

- 2008 (226) ELT 614 (Tri-Chennai)- Uma Mercantile P Ltd. Vs. CC, Chennai
- 1993 (67) ELT 25 (SC)- Pine Chemical Suppliers Vs. CC

5. We have heard the Learned AR. As regard the representation from the appellant, we find that the matter has been listed for regular hearing on 13.05.2019, 27.06.2019, 19.08.2019, 26.09.2019, 29.10.2019, 21.11.2019 & 2.12.2019, on none of the dates any one appeared on behalf of the appellant despite sending notices on 21.11.2019 and 02.12.2019, therefore we take up the appeal for disposal on the basis of available records. We find that the appellant had claimed exemption Notification No. 21/2002-Cus dated 01.03.2002 under serial No. 200, which extends the benefit of nil rate of duty for Melting scrap of iron and steel falling under Custom Chapter heading No. 7204. We find that appellant is a manufacturing unit and using the imported material for melting thereof and use in the manufacture of ingots therefore, as per the use there is no doubt that the goods is melting scrape. Even though there can be a dispute to whether it is falling under Custom Tariff Heading No. 72044100 or 72044900 but as per the entry No. 200 for the purpose of exemption under notification No. 21/2002-CUS all the waste and scrape of 7204 if it is a melting scrap are exempted. Therefore, as per the facts of the present case the chapter sub heading of the goods is not very significant. According to the nature of the goods there is no doubt that even though it is in the nature of "HR Side Cutting" but the same has no other use except for melting and all the melting scrap is covered under exemption notification No. 21/2002-CUS under serial No. 200. It is not the case of the department that the goods so imported is not scrap but classifiable as HR Coil or Sheet. The revenue also accepted that the goods is steel scrap, if that be so the goods i.e. "HR site cutting" is admittedly scrap and falling under custom chapter heading No. 7204 and is not liable to duty in terms of the notification (Supra). Since, the goods are exempted there is no implication of valuation. In these circumstances, it cannot be said that the appellant has mis-declared the goods and consequently the goods are not liable for confiscation. As regard the judgments relied upon by the Learned AR, we have gone through each and every case and found that in all those cases there is a dispute that whether the goods are classifiable as prime material or scrap and in most of the judgments it was held that the goods even though old and used but classifiable as prime material and not as a scrap. Therefore, facts of all those cases are entirely different from the facts of the present case for the reason that in the present case it is admitted by the revenue also that the goods imported is scrap only.

Therefore, the ratio of the judgments relied upon by the Learned AR is not applicable in the present case. With the discussion and finding made by us herein above, we are of the view that the goods are not liable for confiscation being exempted goods, consequently the enhancement of the value made by the lower authority is also not legal and correct. Hence, the impugned order is modified. The appeal is allowed.

(Pronounced in the open court on 28.01.2020)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Kamakshi