

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

REGIONAL BENCH – COURT NO. 03

CUSTOM Appeal No. 10206 of 2014

[Arising Out Of OIA-646/COMMR-A-/KDL/2013 Dated 17/10/2013 Passed By Commissioner Of CUSTOMS-KANDLA]

C.C.-Kandla

Custom House, Near Balaji Temple,
Kandla, Gujarat

.....Appellant

VERSUS

Indian Iron & Metals Pvt Ltd

Amloh Road, Backside Bhambri Kanda,
Godown No. 09, Mandi Gobindgarh,
Punjab

.....Respondent

APPEARANCE:

Shri. Sanjay Kumar, Superintendent (Authorized Representative) for the Appellant
Shri. Manish Jain, (Amicus Curiae- Advocate) for the Respondent

**CORAM: HON'BLE MEMBER (TECHNICAL), MR. RAJU
 HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA**

FINAL ORDER NO. A / 11142 / 2023

DATE OF HEARING: 02.05.2023

DATE OF DECISION: 10.05.2023

SOMESH ARORA

The present departmental appeal is made out against the impugned order of Commissioner (Appeals), Kandla issued on 17.10.2013. When the matter was called, none appeared for the respondent despite the matter coming on board four times earlier. There was also no request for adjournment. The matter being old, the same was decided to be heard on

merits by us, however, in the interest of justice, Shri. Mainsh Jain, Advocate available in the court and being sufficiently experienced in direct tax practice was appointed as Amicus Curiae by the bench and matter proceeded accordingly.

2. The facts of the case under consideration, in brief, are that the appellant had filed BOE No. 2026416/03.05.2013 for clearance of 288.300 MTS of Heavy Melting Scrap (CTH 72044900) declaring assessable value of Rs. 64.51.916/-. During first-check examination, it was revealed that the cargo contained 87.350 MTs of Rail Material Scrap (CTH 73021090) with only the remaining 200.950 MTs of HMS. Consequent to admission of mistake and waiver of their right to SCN and PH by the appellants, adjudicating authority passed impugned order under which he: (i) rejected the declared value in respect of the 87.350 MTS of Rail Material Scrap and re-determined the same as Rs. 31.36.067/- under rule 5 of CVR. 2007; (ii) ordered confiscation of the said goods under section 111(d) and 111(m) with redemption fine of Rs. 6 lakhs; (iii) imposed penalty of Rs. 2 lakhs under section 112(a); and (iv) ordered payment of duty and penalty under section 125(2). Being aggrieved, party preferred appeal before Commissioner (Appeals) citing inter alia, the following grounds:-

- i. Impugned order is not a speaking order as the adjudicating authority has not dealt with the submissions made by the appellant vide letter dated 13.05.2013:
- ii. Appellant at no time intended to import any goods other than HMS, as the order placed and payment made for HMS only and hence impugned order for heavy fine and penalty is not tenable;

- iii. Examination report of the cargo never mentioned that the goods were used rails, and hence adjudicating authority has wrongly invoked Circular No. 8/2006-Cus dated 17.01.2006. Further, adjudicating authority has not discussed the issue of classification of impugned goods under CTH 72.04 or 73.02 and hence the circular is not applicable;
- iv. Hon'ble High Court in Madras Steel Re-Rollers Association. 2007 (217) ELT 167 (Mad) had quashed the said circular which cannot be relied in this case:
- v. Adjudicating authority wrongly held that the appellant had accepted the enhanced value:
- vi. Appellant also relied upon the case law of Vardhaman Tradelink P. Ltd .- 2009 (236) ELT 72 (Tri.Ahmd).

Commissioner (Appeals) on examination of various submissions decided the matter in favour of the party, setting aside adjudication order and allowed the appeal. Aggrieved by the order, department has filed the present appeal seeking setting aside of the order of Commissioner (Appeals) and restoring the Order-In-Original. In grounds of appeal by the department (pressed through Authorized Representative), the following grounds *inter alia*, were taken. Show cause notice was waived by the party vide their letter dated 14.05.2013 accepting misdescription. This letter was never produced before the appellate authority and therefore the Commissioner (Appeals) has been misled by them. The letter dated 14.05.2013 is being reproduced below:-

03772100504 Subject to Fatehgarh Sahib Jurisdiction only Cell : 94172-23863 000020

INDIAN IRON & METALS PVT. LTD.

IRON MERCHANTS & COMMISSION AGENTS

Backside Bhambari Kanda, Amloh Road, MANDI GOBINDGARH-147301 (Pb.)

Ref. No. Dated.

Dt: 14.05.13

To,
The Asst. Commissioner of Customs
Custom House
KANDLA

Ref: B/E No. 2026416 Dt. 03.05.2013

Sub: Import of HMS

Dear Sir,

Kindly refer our previous letter dated 13.05.2013 regarding above stated matter. As stated already in our previous letter approx 87 Mts of used Railway Material was found mixed with the lot. The department is of view that the description has been misdeclared and as such the file has been put up for adjudication. In this regard, we have to state the cargo is required urgently by us and is also incurring heavy detention and ground rent which is not feasible in a recessive market as off today.

Sir, we are regular importer & we also don't like the cargo which do not match the description & this is for the first time that we placed the order with this supplier and for first time we have received this type of material.

Secondly you are also aware that in metal trading market day by day the prices are falling & we are already in loss in this consignment. Hence we humbly request yourself to take a lenient view & pass our Bill of Entry.

Thanking you,

For INDIAN IRON & METALS PVT. LTD.
Authorized Signatory
R. RANIAN
A.O.

True copy

3. Department has further contended that in view of Chaudhary International Vs. Collector of Customs, Bombay as reported in 1999 (109) ELT 371 (Tribunal), the person who has given his consent of passing the order cannot be aggrieved person and also similar position was pronounced by the Apex Court in the case of Commissioner of Customs, Mumbai vs. Virgo Steels as reported in 2002 (141) ELT 598 (S.C). It was also pleaded on

behalf of the department that C.T.H 7302 specifically covers 'rails'. HSN note on this heading provides that it covers all lengths of rails, all rails of the type normally used for railway or tramway track, irrespective of their intended use and there is no exclusion for 'used rails' from CTH and Board clarification on vide Circular No. 8/2006-Cus dated 17.01.2005 also clarified that "used steel rails" was falls under CTH 7302 and not under CTH 7204 as 'ferrous waste and scrap'. Further, the department has contended that mentioning a wrong rule of, the Customs Valuation Rule, 2007 does not vitiate the order as ruled in by Spie Capag S.A. Versus Commissioner of Central Excise, Mumbai reported at 2009 (243) ELT 50 (Tri-Mumbai). It is stated that this decision was based on various High Court and Supreme Court decision. It was also pointed out the invoice was raised in Canada by the trader, whereas goods were of South African origin, as per the certificate of origin produced by the party.

4. On the other hand, Shri. Manish Jain, (Amicus Curiae) assisting the bench pointed out that subsequent to circular of 2006 i.e. the circular no. 08/2006-Cus. dated 17.01.2006 was quashed by both Madras High Court and Punjab and Haryana High Court. On challenge before the Supreme Court matters were remanded as noted in M/s. FLTURISTICS METAL TRADING PVT LTD Vs. COMMISSIONER OF CENTRAL EXCISE, CHANDIGARH-I- reported in 2017-TIOL-4362-CESTAT-CHD. The advocate also fairly brought to our notice that the decision of the Hon'ble Supreme Court in the matter of COMMISSIONER OF CUSTOMS (SEA PORT-IMPORT),CHENNAI Vs. INDO DEUTSCHE TRADE LINKS as reported in -2017 (348) ELT 201 (S.C.) holding that classification under 7204 for "used rails" declared as Heavy Melting Scrap on importation was improper and product was correctly classifiable under Heading 7302, when assessee itself in a letter to Department admitted misdeclaring imported cut Rails as heavy melting scrap and requested for condonation of misdeclaration and admitted value declared to be under lower side and accepted its value for rectification.

4.1 We find that in view of letter dated 14.05.2013 cited (supra) there is a lot of factual similarity in this case with the matter of INDO DEUTSCHE TRADE LINKS cited (supra). We, therefore, all inclined to follow the order of Hon'ble Supreme Court, in this matter and accordingly since letter as above

was not considered by the Commissioner (Appeals), are inclined to allow the departmental appeal with consequential relief, on description as well as value accepted for assessment.

5. The order of Commissioner (Appeals) is therefore, set aside. Appeal is allowed.

(Pronounced in the open Court on 10.05.2023)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

PRACHI