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

REGIONAL BENCH – COURT NO. 03

CUSTOM Appeal No. 11336 of 2017

[Arising Out Of OIA-JMN-CUSTM-000-APP-002-003-17-18 Dated- 05/04/2017 Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD]

Hardevendra Trade Link **.....Appellant**
C/O Deepak Kumar Solanki,
151/B, Swastik Society, Ambawadi
Bhavnagar, Gujarat

VERSUS

C.C.-Jamnagar(prev) **.....Respondent**
Sharda House...Bedi Bandar Road,
Opp. Panchavati, Jamnagar, Gujarat

WITH

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APPEARANCE:
Shri. Vikas Mehta, Consultant for the Appellant
Shri. Himanshu P Shrimali, Superintendent (Authorized Representative) for the Respondent

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

FINAL ORDER NO.A / 11147-11148 /2023

DATE OF HEARING:04.05.2023
DATE OF DECISION:04.05.2023

Raju

These appeals have been filed by M/s. Hardevendra Trade Link against the denial of benefit of Notification No. 12/2012-Cuss. Dated 17.03.2012, under Sl. No. 330 thereon.

2. Learned Counsel pointed out that the aforesaid notification granted following exemption:

S. No.	Chapter or Heading or sub-Heading or Tariff item	Description of goods	Standard rate	Additional duty rate	Condition No.
330	72 (Except 72026000)	All goods other than the following:- (i) Goods mentioned against serial numbers331,332,333,333A, 333B and 334; (ii) Seconds and defectives of goods falling under Chapter 72	5%		

2.1 He pointed out that they had imported re-rollable steel scrap which was examined by Chartered Engineer appointed by the revenue. The Chartered Engineers in his report has clearly stated that the goods are imported re-rollable steel scrap. He argued that the scrap cannot be called "seconds" and "defectives", therefore, the denial of benefit under Clause (ii) Sl. No 330 of Notification No 12/2012-Cus is incorrect.

3. Learned AR relies on the impugned order. He pointed out that the imported goods are cut pieces of used and old material like structural and gear boxes etc. He pointed out that in that context the goods can be called "seconds" and "defectives".

4. We have considered the rival submission. We find that the chartered engineer reports reads as under:-

<u>Details of Inspection:</u>

"The items of the 20 containers 7 nos. BSIU2383668, BSIU2737289, CNSU2026847, HDMU2490552, HDMU2601764, HDMU2609301, TGHU1525367 were destuffed and lying in open yard of CFS.
Looking to the apparent quality of the itmes and condition it is observed with gas cutting scoring marks, cut from longer members in

to fragments, looking to the thickness of the received scrap as structural steel fragments, broken vessels, heavy body of gear box etc it is reclaimed items after converting original item into different size and shape of used sections/ bodies Scrap as per the best engineering practice prevailing in India it is re-rollable scrap as it is having thickness more than 8 mm and length is also around or less than 2000 mm or so.
The items under import is mixed type of old and used reclaimed after dismantling and cutting from original application causes it scrap, scrap strip layout left over TMT ms rods, used structural steel sections of smaller length housing of gear boxes etc".

The benefit of notification has been denied holding these goods as "seconds" and "defectives".

4.1 A perusal of said report of Chartered Engineer clearly indicates that the items are cut from longer members in to fragments. They are not complete items of used gears, structural etc. The Chartered Engineer also has given a clear finding that the goods are re-rollable steel scrap. More over one can understand if finished goods like bars, Pipes, tubes, plate chip etc. are called second hand or used. There cannot be second hand or used scrap, therefore, the argument in the impugned order is incorrect. The term "seconds" and "defectives" applies to view items which have some shortcomings. Scrap cannot be called "seconds" and "defectives". The revenue itself has come to the conclusion that the goods are re-rollable scrap. The same cannot be called "seconds" and "defectives".

5. In view of the above, the impugned orders are set asides. Appeals are allowed.

(Dictated and pronounced in the open Court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

PRACHI