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

REGIONAL BENCH-COURT NO. 3

CUSTOMS Appeal No. 11001 of 2021 - DB

(Arising out of OIA-MUN-CUSTM-000-APP-151-21-22 dated 15/09/2021 passed by Commissioner of CUSTOMS-MUNDRA)

RAJDEV INTER TRADE PRIVATE LIMITED ....Appellant
W-9 Industries Area Yamunangar
Yamunanagar, Haryana

VERSUS

C.C.-MUNDRA ......Respondent
Office of the Principal Commissionerate of Customs,
Port User Buld. Custom House Mundra, Mundra
Kutch, Gujarat- 370421

WITH

CUSTOMS Appeal No. 11002 of 2021 - DB

(Arising out of OIA-MUN-CUSTM-000-APP-149-150-21-22 dated 15/09/2021 passed by Commissioner of CUSTOMS-MUNDRA)

UPPER INDIA SMELTING
AND REFINERY WORKS ....Appellant
11-E Industrial Area Yamunagar
Yamunanagar
Haryana

VERSUS

C.C.-MUNDRA ......Respondent
Office of the Principal Commissionerate of Customs,
Port User Buld. Custom House Mundra, Mundra
Kutch, Gujarat- 370421

AND

CUSTOMS Appeal No. 11003 of 2021 - DB

(Arising out of OIA-MUN-CUSTM-000-APP-149-150-21-22 dated 15/09/2021 passed by Commissioner of CUSTOMS-MUNDRA)

UPPER INDIA SMELTING
AND REFINERY WORKS ....Appellant
Survey No 241
Vill Chandsana Chhatral
Mehsana Highway Tal Kadi Mehsana
Mehsana, Gujarat

VERSUS

C.C.-MUNDRA ......Respondent
Office of the Principal Commissionerate of Customs,
Port User Buld. Custom House Mundra, Mundra
Kutch, Gujarat- 370421

APPEARANCE:

Shri Hardik Modh, Advocate for the Appellant
Shri A R Kanani, Superintendent (AR) for the Respondent

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

Final Order No.<u>10482-10484/2024</u>

DATE OF HEARING: 25.10.2023
DATE OF DECISION: 26.02.2024

<u>RAMESH NAIR</u>

The Appellant M/s Rajdev Intertrade Pvt. Ltd is a private limited company engaged in the manufacture of Zinc Oxide. A product called remelted zinc is used for the said purposes. The Appellant imports the said remelted zinc from Australia. The Appellant has effected the said imports by classifying Remelted zinc under CTH 7901 12 00 of the First Schedule to the Customs Tariff Act, 1975 and paid Basic Customs Duty at the rate of 5%. A show cause notice dated 25.10.2019 was issued to the Appellant alleging that based on the content of zinc in the disputed goods, the goods should be classifiable as "zinc alloys" under CTH 7901 20 90 wherein customs duty leviable is at 7.5% and not under the heading which has been preferred by the Appellant that is as "Zinc not alloyed" under CTH 7901 12 00. The Department has confirmed the demand of differential duty amounting to Rs. 3,74,518 under section 28(1) of the Customs Act, 1962. The Learned Commissioner (Appeals) vide order in appeal No. MUN/CUSTM/000/APP/151 – 21-22 dated 15.09.2021 has upheld the findings of the lower authorities. Hence, the present Appeal.

2. Shri Hardik Modh, Learned Counsel appearing on behalf of the Appellant has made submissions as regards the test report relied on by the Ld. Commissioner (Appeals). He submits that the Ld. Commissioner (Appeals) has relied on the test reports of the sample drawn through metal gun and classified the disputed goods under CTH 7901 20 90 whereas they should have considered taking samples from the said consignment for testing that the substantive procedure was not followed by the department for which he has relied on the following judgments:-

- Hindustan Ferodo Ltd. v CCE 1997 (89) ELT 16 (SC)
- Madhu Wool Spinning mills v UOI 1983 (14) ELT 2200 (Bom)
- Arya Abhushan Bhandar v UOI 2002 (143) ELT 25 (SC)
- Puma Ayurvedic Herbal Pvt. Ltd v CCE Ex. 2006 (196) ELT 3 (SC)
- Nanya Exports v Commissioner of Customs, Chennai 2006 (197) ELT 154 SC

2.2 Without prejudice to aforesaid he also submits that the levy of penalty under section 117 vide OIO and OIA is beyond the Show Cause Notice when the proposed penalty under the same is under section 114(a) of the Customs Act, 1962.

3. Shri A.R. Kanani, Learned Superintendent (AR) appearing on behalf of Revenue has reiterated findings of the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the records. We find that the main issue to be decided in the present case is with regards to classification of "remelted zinc" that whether it will be covered under CTH 7901 20 90 as claimed by the Department or under CTH 7901 12 00 as claimed by the Appellant. In order to determine the classification the said chapter headings and note to Chapter 79 is reproduced below:

Tariff Item		**Description of goods**	**Unit**	**Rate of duty**	
				Standard	**Preferential Areas**
(1)		**(2)**	**(3)**	**(4)**	**(5)**
7901		UNWROUGHT ZINC			
	-	*Zinc, not alloyed :*			
7901 11 00	--	Containing by weight 99.99% or more of zinc	kg.	5%	-
7901 12 00	--	Containing by weight less than 99.99% of zinc	kg.	5%	-
7901 20	-	*Zinc alloys :*			
7901 20 10	---	Mozak or alloys of zinc and aluminium containing not less than 94% by weight of zinc	kg.	7.5%	-
7901 20 90	---	Other	kg.	7.5%	-

SUB-HEADING NOTE :

In this Chapter, the following expressions have the meanings hereby assigned to them:

(a) Zinc, not alloyed

Metal containing by weight at least 97.5% of Zinc.

(b) Zinc alloys

Metallic substances in which zinc predominates by weight over each of the other elements, provided that the total content by weight of such other elements exceeds 2.5%.

(c) Zinc dust

Dust obtained by condensation of zinc vapour, consisting of spherical particles which are finer than zinc powders. At least 80% by weight of the particles pass through a sieve with 63 micrometres (microns) mesh. It must contain at least 85% by weight of metallic zinc.

Furthermore, we note that the Appellant vide Bill of Entry 3940705 dated 09.11.2017 and 4542175 dated 25.12.2017 have admittedly declared zinc at 95.85 % and 95.75% respectively which clearly does not correspond to the requirement as envisaged under note (b) of Chapter 79. As regards the submissions made by the Appellant in respect of reliance placed by the adjudicating authority on the test reports, we are of the view that in the absence of test reports reliance would have been placed on the description of the goods made by the Appellants which too does not correspond to the requirements of the said chapter. Either way the claims of Appellant find no merit. We observe that there was no foul in the department's reliance on the test reports in furtherance of ascertaining the classification of the goods in dispute. Therefore, the adjudicating authority was not wrong in re-classifying the disputed goods under CTH 7901 20 90. The classification of the goods by the Department is proper and needs no interference. The judgments cited by the Appellant in support of their claims are based on facts and circumstances entirely different from that in the present case therefore cannot be relied upon.

5. In view of the findings and discussions above, we are of the view that the impugned orders are just and legal which does not require any interference. Accordingly, the impugned orders are upheld. The appeals are dismissed.

(Pronounced in the open court on 26.02.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha