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

REGIONAL BENCH-COURT NO. 3

CUSTOMS Appeal No. 11238 of 2018 - DB

(Arising out of OIA-AHD-CUSTM-000-APP-153-17-18 dated 03/01/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

Kana Metal Corporation ....**Appellant**
202-203, 2nd Floor, Neelgagan Plaza,
Opp. Police Commissioner's Shahibaug,
Ahmedabad, Gujarat

VERSUS

Commissioner of Customs-Ahmedabad ......**Respondent**
Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

APPEARANCE:
Shri Vikas Mehta, Consultant for the Appellant
Shri Sanjay Kumar, Superintendent (AR) for the Respondent

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

Final Order No.11804/2024

DATE OF HEARING: 06.06.2024
DATE OF DECISION: 27.08.2024

RAMESH NAIR

Brief facts of the case are that the appellant has filed Bill of Entry No. 7153791 dated 19-10-2016 for import of 21.170 MTs of the goods declared as 'Aluminium Scrap Tassel as per ISRI' and classified the same under RITC 76020010 along with relevant documents. In view of the description of goods, the bill of entry was assessed on 19.10.2016 on the basis of documents submitted by the appellant and duty leviable came to tune of Rs. 4,02,014/-. The subject goods after assessment thereof were ordered for examination (2nd check). During the course of examination, the examiner found that the subject goods in the shape of Aluminium Wire and the Assistant Commissioner (Docks) has submitted the examination report as under:-

> *"It is to report that 21.110 MTs of the goods which were found as "Coils of Aluminium Wire of Uniform Diameter of 10MM" nowhere fits within the definition of Aluminium Scrap Tassel and hence the consignment to that extent is grossly mis-decalred to evade the Customs duty."*

1.1 The examiners opined that on detailed examination by the Custom officer, the goods were found 'Coils of Aluminum Wire of Uniform Diameter of 10MM' having weight 21.110 MTs. The importers were asked to submit their clarification on this. The appellant requested for re-examination of goods under the supervision of Chartered Engineer for taking second opinion. However, the same was not allowed and on the basis of examination report, it was contended that the goods imported is 'Coils of Aluminum Wire of Uniform Diameter of 10MM'. Consequently, it was proposed to re-classify the goods from 76020010 as declared by appellant to 76051100. Due to this change, it was also proposed to enhance the value of the goods on the basis of NIDB data and consequently, the rate of duty was also proposed to enhance from 2.5% to 7.5%. The matter was adjudicated by the Additional Commissioner vide order-in-original dated 21.12.2016, wherein the following order was passed:-

> *"1. I re-determine the assessable value from Rs. 22,22,627.72, as declared by the Importer to Rs. 27,44,300/- (Rupees Twenty seven lakh forty four thousand three hundred only) and accordingly confirm the duty payable as Rs.7,25,270.46/- (Rupees Seven lakh twenty five thousand two hundred seventy and forty six paise only) on the said value under section 28 of the Customs Act 1962 and order to recover the same from the said importer M/s Kana Metal Corporation. However, the duty of Rs. 4,02,013.62/- (Rupees Four lakh two thousand thirteen and sixty two paise only) shall be appropriated against the recovery of the above confirmed demand;*

2. I confiscate the entire Consignment of the goods imported vide bill of antry no. 7155791 dated 19.10.2016 yalued at Rs.27,44,300/- (Rupees Twenty seven lakh forty four thousand three hundred only) 111(f), 111(1) & 111(m) of the Customs Act-1962. I however give an option to the said importer M/s Kana Metal Corporation to redeem the imported goods on payment of fine of Rs.2,70,000/- (Rupees Two lakh seventy thousand only) under section 125 of the Customs Act 1962.

3. I classify the goods 21.110 MT of 'Coils of Aluminum Wire having uniform diameter of 10 mm" imported vide bill of entry no. 7153791 dated 19.10.2016 under CTH 76051100.

4. I order to recover interest from the said importer M/s Kana Metal Corporation on the above duty at the appropriate rate under Section 28AA of the Customs Act, 1962.

5. I impose penalty of Rs.7,25,270.46/- (Rupees Seven lakh twenty five thousand two hundred seventy and forty six paise only) on the said importer, M/s Kana Metal Corporation, under section 114A of the Customs Act 1962.

However, if they pay the amount of duty determined and ordered for recovery under (1) above along with interest payable thereon as ordered under (4) above within thirty days from the date of communication of this order, the amount of penalty shall be twenty-five percent of the duty determined. The benefit of reduced penalty shall be available if the amount of penalty so determined is also paid within the aforesaid period of thirty days.

6. I impose penalty of Rs.25,000/- (Rupees Twenty five thousand only) on the said Importer, M/s Kana Metal Corporation, under section 114AA of the Customs Act 1962."

Being aggrieved by the aforesaid order-in-original, the appellant filed appeal before the Commissioner (Appeals), who vide impugned order dated 03.01.2018 rejected the appeal filed by the appellant. Therefore, the appellant is before us with the present appeal.

2. Shri Vikas Mehta, Learned Consultant appearing on behalf of the appellant submits that the goods imported by the appellant is Aluminium Scrap Tassel as per ISRI and the same was correctly classifiable under RITC 76020010. Therefore, neither any change of rate of duty and nor value is required. He submits that the examiner only on eye estimation given a report that goods in 'Coils of Aluminium Wire of Uniform Diameter of 10MM'. It is his submission that since, the goods was not the fresh material of coils of wire, they have requested for second opinion from the Chartered Engineer but the Assessing Officer /Adjudicating Authority has not allowed the same. Therefore, there is a clear violation of natural justice. He submits that on the contrary of the examination report, the appellant have submitted the independent Chartered Engineer Certificate which has certified that the goods is 'Aluminium Scrap Tassel as per ISRI' and not the virgin Aluminium Wire. He further submits that as per the Pre-Shipment Inspection Report, the goods have been certified as Aluminium Scrap. In this position, the documents such as Chartered Engineer Certificate and Pre-Shipment Inspection Report should be given preference to the examination report, which was disputed by the appellant. Accordingly, the appellant has correctly classified and valued the goods as Aluminium Scrap.

3. Shri Sanjay Kumar, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

3.1 He submits that the examination report is very clear according to which the goods is not Aluminum scrap but it is a 'Coils of Aluminium Wire of Uniform Diameter of 10MM' and the same was wrongly classified. Hence, due to change in the nature of product, the classification, as well as the value declared by the appellant is incorrect. Accordingly, the impugned order is legal and proper, which does not required any interference.

4. We have carefully considered the submission made by both the sides and perused the records. We find that the entire case was made out on the basis of the examination report of Assistant Commissioner (Docks), who has reported the nature of goods as under :-

> *"It is to report that 21.110 MTs of the goods which were found as "Coils of Aluminium Wire of Uniform Diameter of 10MM" nowhere fits within the definition of Aluminium Scrap Tassel and hence the consignment to that extent is grossly mis-decalred to evade the Customs duty."*

The appellant strongly objected the above report and requested for re-examination and second opinion on nature of the goods. However, the same was not accepted by the Assistant Commissioner.

4.1 We find that the fair opportunity should have been given to the assessee to defend their case and denial of re-examination of the goods is in violation of principle of natural justice. Contrary to the report of examination, the appellant have submitted the independent Chartered Engineer Certificate issued by Shri G. Venkatapathy M., who in his report dated 30.12.2016, opined as under :-

> *"(i) the goods consist of discarded Aluminium Wire Rod in loose and strapped bundles, (ii) there are 8 strapped. bundles and rest of the Wire Rod are in loose form, (iii) the wire rods in loose form intermingled and are cut intermediately / in between and (iv) the Wire Rod in bundles has*

surface defects and cuts; he thus concluded that the Aluminium Scrap in the present form may be termed as discarded rolling process leftovers/rejects due to quality and generally sold as scrap."

From the above Chartered Engineer Certificate, it is crystal clear that goods are not in the primarily form of 'Coils of Aluminium Wire of Uniform Diameter of 10MM'. Therefore, the goods cannot be considered as the fresh coils of Aluminium wire but as per the nature of the goods described by the Chartered Engineer, it is clearly Aluminium Scrap Tassel as per ISRI. Therefore, the same is correctly classified under the classification RITC 76020010, by no stretch of imagination, the same can be classified under 76051100. We further observed that the ISRI specification for 'Aluminium Scrap Tassel' described as under:-

"Tassel

OLD MIXED ALUMINUM WIRE AND CABLE:

Shall consist of old, unalloyed aluminum wire and cable which may contain up to 10% 6000 series wire and cable with not over 1% free oxide or dirt and free from hair wire, wire screen, iron, insulation and other non-metallic items."

From the above description also, the Tassel under the ISRI specification for Aluminium scrap includes old, unalloyed Aluminium wire and cable. Therefore, even the Aluminium scrap if it is in rejected wire form having various defects as described by the Chartered Engineer. Even from the look of the product, it may appear as Aluminium Wire but the same carries various defect, cut, etc., hence it will clearly falls under Aluminium scrap. Therefore, in the facts of the present case, we are of the view that the appellant have correctly classified the goods as Aluminium Scrap under RITC 76020010 and since, the nature of goods is clearly as per the descriptions declared in the bill of entry, the enhancement of the value being consequently to the claim of the Revenue, the enhancement of value will also not be sustainable.

5. As per the above discussion and findings, the impugned order is not sustainable. Hence, the same is set aside. Appeal is allowed.

(Pronounced in the open court on 27.08.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha