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

REGIONAL BENCH- COURT NO.3

Customs Appeal No.11567 of 2017

(Arising out of OIA-JMN-CUSTM-000-APP-007-17-18 dated 07/04/2017 passed by Commissioner of CUSTOMS-JAMNAGAR(PREV))

Alang Auto General Engg Co Pvt Ltd **.........Appellant**
Cm- 458 Rukmani Gun Near Virani School
Kaliyabid, Bhavnagar, Gujarat

VERSUS

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

WITH
Customs Appeal No.10070 of 2018

(Arising out of OIA-AHD-CUSTM-000-APP-131-17-18 dated 01/11/2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

Alang Auto General Engineering Co Pvt Ltd **......Appellant**
Cm- 458 Rukmani Gun Near Virani School
Kaliyabid, Bhavnagar, Gujarat

VERSUS

C.C.-Ahmedabad **.........Respondent**
Custom House, Near All India Radio Navrangpura,
Ahmedabad,, Gujarat

AND
Customs Appeal No.10482 of 2018

(Arising out of OIA-JMN-CUSTM-000-APP-040-17-18 dated 01/11/2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

Alang Auto General Engg Co Pvt Ltd **.........Appellant**
Cm- 458 Rukmani Gun Near Virani School
Kaliyabid, Bhavnagar, Gujarat

VERSUS

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

APPEARANCE:
Shri. Vikash Mehta, Consultant & Shri. Rahul Gajera, Advocate for the Appellant
Shri. A R. Kanani, Superintendent (AR) for the Respondent

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

Final Order No.11927-11929 /2024

DATE OF HEARING: 26.07.2024
DATE OF DECISION:04.09.2024

SOMESH ARORA

In the instant appeals which are against the above impugned order of Commissioner (Appeals), Appellants have merely contended that the goods imported by them are Re-rollable scrap falling under CTH 72044990 and thus entitled to benefit under Exemption Notification No. 12/2012-Cus., dated 17.03.2012 which as per Sr. No. 330 is prescribed effective rate of 5%. Appellants have indicated that the examination report by the Customs authorities endorses that the description of goods is as per import invoice and hence same were correctly classified. But as against this, the department now considers the same to be old and used steel items cut in such sizes which are suitable for re-rolling and therefore within excepted category of second and defectives as per goods falling under chapter 72 and therefore, not entitled to concessional rate of duty the aforesaid notification. Department to support its case has relied upon the pre-shipment certificate of the consignment of impugned goods, which indicate that the goods are second/defective as per internationally accepted parameters. The appellant on the other hand contends that the Customs authorities have done examination of the impugned goods and have not found them to be "second and defective". Our attention in this regard was drawn to page 37 which contained the examination report which specifically mentions "that Cargo does not contain any serviceable parts or ammunitions". It was, therefore, contention of the appellants that since goods are to be classified as presented before the Customs and because the examination report of the officers supports their description, therefore, department has erred in relying upon pre-shipment certification which in any case also mentions as follows:

"That I, we have visually inspected the consignment and certify are follows:

(a) The imported consignment is actually metallic scrap/ seconds/defective as per the internationally accepted parameters for such a classification."

It was therefore submitted by them that the certificate in contention does not clearly state as to whether what is certified is scrap/second or defective as it does not strikes of any description. Therefore, in any case certificate cannot be relied upon against them and it also mentions the category of scrap apart from seconds and defective, and that such a vague certificate cannot be preferred over inspection done by Examining Officers of the Indian Customs. Further, they have relied upon Indian standard for classification PROCESSED FERROUS SCRAP (First Revision) of Bureau of Indian standards 2002 Edition which as per Amendment No. 2 of August, 2008 provides as follows:-

"1S 2549: 1994 CODE FOR CLASSIFICATION OF PROCESSED FERROUS SCRAP

(First Revision)

(Page 5, clause 13.1)- Substitute the following for the existing:

13.1 Re-rollable Steel Scrap

It shall consist of seconds and defectives or cuttings/rejected ingots/blooms/billets, bars, rods, angles, shapes and sections, rails and railway materials such as wheels, tyres, axles, sleepers bars, fish plates and flat rolled products suitable for re-rolling without undergoing process of melting and of length 5.000 mm (Max) width 800 nun (Max) thickness diameter 8 mm (minimum). In case of rails and railway materials there will be no size restriction."

The point of emphasis being that as per Bureau of Indian Standard Re-Rollable Scrap in any case includes seconds and defectives or cuttings/ rejected ingots/blooms/billets etc., suitable for re-rolling with length and width as stipulated, only. It was their submission that even in the alternate, the case of the department cannot be sustained unless and until while contesting they had found that defectives and seconds were beyond stipulated dimension and that no such test has been carried out by the department, while upholding show cause notice at lower stages.

2. Considered. We find substance in the submissions made by the appellant, in the factual matrix of the case, as well as evidences brought on record by either side. It was for the department to give precedence to its own examination report conducted by its own experienced staff over any expression contained in pre examination report which uses expression “scrap/second/ defective” without striking any portion and therefore can be construed as vague in the absence of striking off expression scrap in the referred certificate which is part of the record.

2.1 We, therefore find that in view of various evidences brought on record as well as the examination report placed before us of customs Officers. Appellants have made out a proper case for claim of exemption.

3. Appeals are therefore allowed with consequential relied.

(Pronounced in the open court on 04.09.2024)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Prachi