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

REGIONAL BENCH-COURT NO. 3

Customs Appeal No. 10067 of 2020- DB

(Arising out of OIA-AHD-CUSTM-000-APP-424-19-20 dated 11/10/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

GURU RAJENDRA METALLOYS INDIA PVT LTD ....Appellant
101, G.R. House, 8 Gautam Vihar Society,
Aroma School Road, Opp. Sukhsagar Complex,
Ashram Road , Usmanpura
Ahmedabad, Gujarat

VERSUS

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

WITH

(i) Customs Appeal No. 10414 of 2020- DB (G R METALLOYS PVT LTD)
(ii) Customs Appeal No. 10415 of 2020- DB (G R METALLOYS PVT LTD)
(iii) Customs Appeal No. 10416 of 2020- DB (G R METALLOYS PVT LTD)
(iv) Customs Appeal No. 10417 of 2020- DB (G R METALLOYS PVT LTD)
(v) Customs Appeal No. 10418 of 2020- DB (G R METALLOYS PVT LTD)
(vi) Customs Appeal No. 10419 of 2020- DB (G R METALLOYS PVT LTD)
(vii) Customs Appeal No. 10420 of 2020- DB (G R METALLOYS PVT LTD)

[(Arising out of OIA-AHD-CUSTM-000-APP-593-599-19-20 dated 14/01/2020 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)]

APPEARANCE:

Shri Deepak Kumar, Consultant for the Appellant
Shri Prashant Tripathi, Superintendent (AR) for the Respondent

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

Final Order No.12146-12153/2024

DATE OF HEARING: 13.06.2024
DATE OF DECISION: 24.09.2024

<u>RAMESH NAIR</u>

These appeals filed by the appellant against various bills of entry assessed by enhancing the value as per DGOV Circular and on the consent of the appellant for enhancement of the value. In one of the appeal bearing No. 10067/2020 one additional issue involved is classification of Aluminum of Scrap, confiscation, redemption fine and imposition of penalty. The Assessing Authority has enhanced the value only on the ground that the appellant have given their consent therefore, the same cannot be disputed. The Learned Commissioner (Appeals) also agreeing with this contention that since the appellant have given their consent the price arrived at on the basis of DGOV Circular is correct and legal and the assessment made thereon cannot be disputed by filing appeal before the Commissioner (Appeals).

2. Shri Deepak Kumar, Learned Consultant appearing on behalf of the appellant submits that the very same issue has been decided in their own case by this Tribunal in the order No. A/11030-11080/2020 dated 01.06.2020 wherein it was held that even though there is a consent given by the assessee the assessment order can be challenged. Therefore, the appeal is maintainable before the Commissioner (Appeals) and the same ought to have been decided on merit. The enhancement of the value on the basis DGOV Circular has been rejected in various judgments.

2.1 As regard the issue of classification, he presented some photograph of the disputed goods and submits that these are unusable material of Aluminum, which is scrap for supplier and these scraps are used as a scrap only and not as a Aluminum foil. Therefore, the claim of the Revenue that the goods are not Aluminum scrap but Aluminum foil is incorrect.

2.2 He further submits that the entire goods were confiscated on the ground that the so called Aluminum foils were concealed with the Aluminum scrap therefore, the other goods which are not under dispute as regard classification was wrongly confiscated.

3. Shri Prashant Tripathi, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. We have carefully considered the submission made by both the sides and perused the records. We find that in these matters whether the value enhanced is correct or otherwise has not been gone into as the entire issue was revolved around the concent given by the appellant, on that basis the value was enhanced on the basis of DGOV circular. We find that the price in any case cannot be enhanced merely on the basis of DGOV circular unless until some strong material is found to support the price which was fetched from DGOV circular. However, this exercise has not been carried out.

4.1 We find that even though the appellant have given the consent but since there was no proper basis for valuation, the appellant has a right to challenge such assessment order. Therefore, merely on the basis of consent the entire case cannot be decided. As discussed above, since there is no proper basis for the enhancement of the value, this issue needs to be reconsidered by the Assessing Authority, on the basis of any other material, if at all any available. The matter needs to be reconsidered also for the reason that no speaking order was passed by the Assessing authority for enhancement of the value.

4.3 As regard the classification dispute, the Adjudicating Authority has not considered the facts properly. As regard the submission of the appellant that the entire consignment cannot be put to confiscation on the ground that some part of the material was mis-declared as scrap instead of Aluminum foils. In this regard firstly, the dispute of classification itself is debatable which needs to be re-appreciated. Secondly, since the entire goods is Aluminum scrap except a small part of disputed goods, the entire cannot be confiscated on the pretext that the same were used for concealing the small part of disputed goods. Therefore, the prima facie confiscation does not appear to be correct. As per the above observation, entire matter needs to be reconsidered, keeping in mind the above observation.

5. Accordingly, the impugned orders are set aside. Appeals are allowed by way of remand to the Assessing/Adjudicating Authority.

(Pronounced in the open court on 24.09.2024)

RAMESH NAIR
MEMBER (JUDICIAL)

RAJU
MEMBER (TECHNICAL)

Raksha