

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

REGIONAL BENCH- COURT NO.3

Customs Appeal No.10080 of 2013

(Arising out of OIA-167/COMMR-A-/KDL/2012 dated 12/10/2012 passed by Commissioner of CUSTOMS-KANDLA)

Shree Keshariyaji Metal Impex

.....Appellant

Plot No 386, Gidc

Road No 9, Katvada, Ahmedabad, Gujarat

VERSUS

C.C.-Kandla

.....Respondent

Custom House,

Near Balaji Temple, Kandla, Gujarat

APPEARANCE:

Shri Hardik Modh, Advocate for the Appellant

Shri. Vijay G. Iyengar, Superintendent (AR) for the Respondent

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

Final Order No. A/ 11344 /2022

DATE OF HEARING: 02.11.2022
DATE OF DECISION: 04.11.2022

RAMESH NAIR

This appeal is directed against impugned Order-In-Appeal passed by Commissioner (Appeals), Kandla whereby, redemption fine of Rs.6 lacs and a penalty of Rs.2 lacs was imposed upon the appellant on the alleged charge of misdeclaration of goods in as much as the appellant have declared the goods as Aluminium Extrusion Scrap (Tread) as against Aluminium Tread grade (Aluminium sheet) as claimed by the department. The appellant while filing the bill of entry as regard objection by the department filed a letter that they need to use these imported goods for melting purpose therefore, they sought clearance and cleared the goods by paying the duty as demanded by the department. Thereafter, the adjudicating authority adjudicated the matter only with regard to confiscation of the goods on the contention that the appellant have requested for waiver of show cause notice and personal hearing in this case and to decide the case on merit. It is this adjudication order which was challenged before the Commissioner (Appeals), the Commissioner (Appeals) rejected the appeal filed by the appellant. Hence the present appeal.

02. Shri Hardik Modh, learned counsel appearing on behalf of the appellant submits that the appellant have submitted a letter to the assessing authority for clearance of the goods considering that they need the material for melting purpose. He submits that though the appellant have paid the duty as claimed by the department but the fact remains the goods were not Aluminium Tread Grade whereas, the same is Aluminium Scrap therefore, the goods ought not to have been confiscated and no redemption fine or penalty should have been imposed. He placed reliance on the following judgments:-

- Commissioner of Customs, Chennai Vs. O.P. Steels Ltd.- 2001 (135) ELT 608 (Tri. Chennai)
- Commissioner of Cus., Chennai Vs. Kamatchi Sponge & Power Coprn.Ltd. - 2016 (337) ELT 73 (Tri. Chennai)
- Vardhaman Tradelink P. Ltd. Vs. Commissioner of Customs, Jamnagar - 2009 (236) ELT 72 (Tri. Ahmd.)
- Prateek Traders Vs. Commissioner of Customs, Ahmedabad - 2009 (248) ELT 462 (Tri. Ahmd)
- Dewan Steel Industries Vs. Commissioner of Customs, Amritsar - 2008 (226) ELT 722 (Tri. Del)
- P.A.B. Traders Vs. Commissioner of Customs, Cochin - 2010 (261) ELT 260 (Tri. Bang.)
- Elca Carbone Lorraine Pvt. Ltd. Vs. Commissioner of Customs, Chennai - 2005 (191) ELT 582 (Tri. Bang.)
- Radhey Shyam Ratanlal Vs. Commissioner of Customs, Mumbai - 2000 (121) ELT 638 (Tri.)
- S.K. Bose Vs. Collector of Customs, New Delhi - 1997 (96) ELT 686 (Tri.)
- Chander J. Obhrai Vs. Commissioner of Cus. (Exports), Mumbai - 2009 (233) ELT 112 (Tri. Mum.)

03. Shri Vijay G. Iyengar, learned Superintendent (AR) reiterates the finding of the impugned order.

04. We have carefully considered the submissions made by both the sides and perused the records. We find that as regard the classification of goods that whether the same is Aluminium Scrap or Aluminium Sheet, the assessment was made on the basis of the department's claim and the appellant have paid the duty. The said assessment was not challenged by

the appellant therefore at this stage, the classification cannot be conclusively decided. However, for the purpose of redemption fine and penalty, a prima facie view has to be taken on the nature of goods. On going through the records, we find that the adjudicating authority in the Order-In-Original stated the inspection report as under:-

“Inspected the container nos. & verified seal nos. seals found intact. Opened & examined goods 100% under supervision of Supdt. (DE) & AC (DE) in presence of representative of CHA Shri Amit. The goods declared as aluminium extrusions scrap (tread) as per ISRI. On verification the goods found as Aluminium Tread Grade and attached Panel board is of Aluminium Sheet. Checked the description. Verified that no other item/explosives/war material found mixed with the lot. Weight found as 27.790 MTs. as per weigh bridge of CWC/CFS-II, Kandla followed Cir.No.56/04 as amended by 60/04.”

From the above inspection report, it is observed that the goods was found attached with panel board of Aluminium Sheet or the fresh tradable goods. In this fact, we find that it cannot be conclusively held that the goods are not Aluminium scrap. From the description such as panel board, it appears that the panel board is made up article of aluminium sheet, the panel board cannot be said to be fresh material or Aluminium sheet. It appears that the said goods is used material therefore, the same can be classified as aluminium scrap however, we can only draw a prima facie view on the nature of the goods at this stage as the classification of goods attained finality with the assessment of bill of entry and the same was not challenged. However, considering the prima facie view about the goods and in the facts and circumstances of the present case, we are of the view that the redemption fine and penalty imposed by the lower authorities are very excessive and the same deserves to be reduced. Accordingly, we reduce the redemption fine from Rs.6 lacs to Rs.1 lac and penalty is reduced from Rs.2 lacs to Rs.35,000.

05. In view of our above observation, the impugned order stands modified to the above extent and appeal is partly allowed.

(Pronounced in the open court on 04.11.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)