

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

REGIONAL BENCH- COURT NO. 02

Customs Appeal No. 11474 of 2015

(Arising out of Review Order-R-2-2015 Dated- 17/07/2015 passed by Commissioner of CUSTOMS-AHMEDABAD)

C.C.-Ahmedabad

Custom House, Near All India Radio Navrangpura,
Ahmedabad, Gujarat

.....Appellant

VERSUS

Vinayak Steel Impex

2/A, 1st Floor, Building No. 16,
Second Carpenter Street, N D Road, C P Tank,
MUMBAI, MAHARASHTRA

.....Respondent

APPEARANCE:

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

**CORAM: HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)
HON'BLE MR. C. L. MAHAR, MEMBER (TECHNICAL)**

Final Order No. 13220 /2024

DATE OF HEARING:10.12.2024
DATE OF DECISION:20.12.2024

SOMESH ARORA

In this case, the department is in appeal before us. The factual matrix is that the Respondent filed Bill of Entry No. 5383099 dated 03.05.2014 with Customs, ICD, Khodiyar, Ahmedabad for clearance of 66.100 MT of Stainless-Steel Melting Scrap of Grade 201. The goods were purchased from overseas supplier, namely, M/s. Lotus Global Middle East FZE, Sharjah-U.A.E. On examination, it was noticed that 25 pallets weighing 53.660 MT (out of 66.100 MT declared as scrap) comprised of stainless-steel sheets having thickness of less than 4mm.

3. A Show Cause Notice dated 15.10.2014 was issued to Respondent, *inter alia*, demanding anti-dumping duty amounting to Rs. 63,99,733/- on 46.646 MT (after excluding pallet Nos. 8, 11 and 23 bearing "Made in Japan" marking as Japan is not among the countries specified in Notification No. 14/2010-Cus dated 20.02.2010 for levying anti-dumping duty.

4. Ld. Commissioner confirmed the demand of anti-dumping duty on C. R. Sheets of pallet Nos. 6, 7 and 17 on the ground that it bore specific marking of "Made in Taiwan". However, he dropped the demand for remaining 19 pallets on the ground that there were no markings to the effect that these were also of Taiwanese origin. The findings are reproduced below for the ease of ready reference:

"29. ..On going through the table at para 4 of the SCN, I find that only the CR S. S. Sheets of pallet no 6, 7 and 17 have specific marks that they are made in Taiwan. Rest of the CR S. S. Sheets of the remaining pallets do not have any such marking about the country of origin. I do not subscribe to the view that just because all the remaining sheets are of similar grade they also would have been manufactured in Taiwan. My views are fortified from the fact that even CR sheets of pallet No. 8, 11 and 23 (which are of Japanese origin), for which anti-dumping duty has not been demanded in the SCN, are of similar grade. Hence, I am of the view that just because the sheets are of similar grade and thickness, they cannot be said to be of Taiwanese origin. Unless there is clear evidence in the form of markings on the sheet itself that they are of Taiwanese origin. Thus anti dumping duty is leviable only on the C. R. S. S. Sheers of pallet No. 6, 7 and 17 where it is conclusively proved in the form of markings on the sheets itself that they have been manufactured in Taiwan..."

5. According to the reasoning advanced by the department in filing the present appeal, goods (S. S. Sheets) on which demand of anti-dumping duty was dropped were akin to the pallets of Taiwanese origin and further, in the wake of mis-declaration, the Respondent, being the importer, ought to have provided documentary evidence about the country of origin of such goods.

6 The Respondent submits that it had entered into contract dated 01.03.2014 with overseas supplier for supply of Stainless-Steel Melting Scrap Grade-201 of UAE origin and not S. S. Sheets that were wrongly shipped to them. This fact has been duly stated by Shri Bhupesh Jabarmal Jain, Proprietor of Respondent in his statement dated 07.07.2014 narrated in para 7.2 of the Show Cause Notice. Hence, no adverse inference can be

drawn on account of the inability of Respondent to produce certificate of origin in respect of items not ordered by them.

6.2 It further submits that Notification No. 14/2010-Cus dated 20.02.2010 specifies several other countries apart from Chinese Taipei as well as presence of S. S. Sheets of Japanese origin (on which no anti-dumping was demanded), it was submitted that S. S. Sheets are manufactured in several countries including those which are not specified for levying anti-dumping duty. Hence, it was completely unjustified on the part of department to pursue the proposition that even those S. S. Sheets which did not bear any marking about origin must be treated as Made in Chinese Taipei. According to the material available on internet (website – linkedin.com, Indianmetal.com and sonshunsteel.com), there were several companies like K & S, Hillman Group, Thyssenkrupp, Arcelor, Outokumpu, Acerinox, POSCO, YUSCO, Nippon Steel Corporation (NSC), AK, Nisshin Steel, TISCO, Yong Xing Special Stainless Steel, etc. and countries like Spain, France, Finland, etc. who were engaged in manufacturing and exporting S. S. Steel Sheets and the same were not confined to Chinese Taipei.

6.3 Hence, in the facts and circumstances, where no markings were found, it was incorrect on part of department to presume country of origin and pursue the demand of anti-dumping duty on such S. S. Sheets. It therefore, prayed for rejection of appeal.

6.4 The department to the contrary is before us seeking to set aside the dropping of demand of Rs. 55,19,491/- which was not sustained by the adjudicating authority, while sustaining demand on other issues. The department is of the view that the demand as above of Rs. 59,19,491/- ought to be sustained for Anti Dumping Duty by the adjudicating authority on the ground that the same should have been treated as Taiwanese origin, in the facts and circumstances of the matter and it was for the importer to show that these was not of Taiwanese origin. They have also relied upon

the case law to the effect that if something is alleged in show cause notice, it is for the appellants to rebut the allegation.

7. We have considered the rival submissions. We find the department is aggrieved by that portion of the order whereby 19 pallets out of 25 which were having no country of origin mentioned on them and which were imported from Dubai were not subjected to the Anti Dumping duty which was mainly meant for Cold Stainless-Steel Sheet if they originated from China and Taiwan. The goods were imported from Dubai and had 3 pallets on which Made in Taiwan was marked and 3 pallets on which Made in Japanese was mentioned. The department is of the view that the Commissioner in the instant case should have held that out of 22 pallets, 19 pallets which were not having any country of origin should also have been treated of Taiwanese/Chinese origin and subjected to Anti Dumping Duty as well as other penal actions. In this regard, the finding of the learned Commissioner is reproduced below:

"On origin and the remaining sheets (though not have any marking about the country of origin) have other marks, grade and thickness which are akin to the sheets having specific marking of country of origin. On going through the table at para 4 of the SCN, I find that only the CR S.S. Sheets of pallet no. 6,7 and 17 have specific marks that they are made in Taiwan. Rest of the CR S.S. Sheets of the remaining pallets do not have any such marking about the country of origin do not subscribe to the view that just because all the remaining sheets are of similar grade they also would have been manufactured in Taiwan. My views are fortified from the fact that even CR sheets of pallet No. 8, 11 and 23 (which are of Japanese origin), for which anti-dumping duty has not been demanded in the SCN, are of similar grade. Hence, I am of the view that just because the sheets are of similar grade and thickness, they cannot be said to be of Taiwanese origin unless there is clear evidence in the form of markings on the sheet itself that they are of Taiwanese origin."

7.1 It is clear that the Learned Commissioner while authorizing the order has treated the goods on which they were no marking of the country of origin to be of other than Chinese and Japanese origin. The Department is of the view that the simply because mis-declaration happened in the instant case in as far as sheets hidden in the scrap were declared as scrap only, therefore, in the face of mis-declaration, the Commissioner should have

presumed that 19 disputed pallets were also of Chinese/Taiwanese origin. We find that in the instant case Commissioner while writing order has duly considered that there was a mis-declaration involved and enhance the value and subjected the party to the penalty for importation of mis-declared goods, including the duty and penalty thereon. Department is of the view that once misdeclaration is found then it was for the party to prove that 19 pallets were not of Chinese/Taiwanese origin even when the goods have been imported from UAE. Department has also proposed that once something is alleged in show cause notice it is for the party to prove otherwise. We have considered the appeal of the department in the light of factual matrix. We find that consequences of mis-declaration by way of duty and penalty has already been sustained by the Adjudicating Commissioner, on the 3 pallets which were of the Taiwanese origin, he has charged Anti Dumping Duty and has also been given benefit on 3 pallets which were of Japanese origin. In relation, however, to 19 pallets which were having no marking of country of origin, the department is of the view that they are of Non Taiwanese origin needed to be proved by the party rather than they being asked to prove that such pallets were of Taiwanese origin. The assertion that once department has alleged something in show cause notice then it is for party to prove otherwise is erroneous as a general rule. We note whenever some mis-declaration is found in any imported consignments, the consequences of the same have been spelt out in the Statute itself, which in this instance is Customs Act, 1962. One of the consequences of such mis-declaration is to extend the period of limitation to 5 years and second consequence is that valuation of the goods can be re-visited by the department.

7.2 We also find both of these consequences have been meted out to the appellant, however, in appeal the department has come out with the proposition that mis-declaration puts onus on the party for all purposes, therefore, even the origin of the country on which no stamping was there

had to be proved by the appellant party. We do not agree with this proposition, Once consequences of the mis-declaration have been meted out as statutorily required to the appellants, the onus to prove its own assertion that goods which were not containing any origin were of the Taiwanese origin and not of Japanese or any other exempt origin is on the department. It is the department who in the show cause notice is asserting that the goods i.e. 19 pallets were also of the Taiwanese origin. It is cardinal principle of pleadings and evidence that the one who asserts has to prove. Further, department has no right to assume that un-printed sheets could be of Taiwanese origin and not of Japanese. Specifically, when both were found in the some consignment and department is not disputing the benefit granted of anti-dumping duty to the pallets, which were of Japanese origin. In the domain of appreciation of evidence generally there is no room for assumption and presumption, even the rule of preponderance of probability which somewhat affords the scope of presumption in the face of preponderance, also cannot apply in the present situation. To illustrate, if the consignment had been coming from Taiwan and predominance out of 25 pallets say of 20 pallets had been marked as of Taiwanese origin then by preponderance of probability the remaining five could have been presumed to be of Taiwanese origin even if found without mark, in the consignment. In the instant case, however, situation is quite different, there are 3 pallets each of Japanese origin (i.e. non ADD country) and 3 pallets of Chinese /Taiwanese origin (subjected to ADD country), therefore, without bringing in presumption, the remaining 19 cannot be treated as of Taiwanese origin. This is more so, as the consignment has emanated from Dubai which is a 3rd party country. Again department cannot extend the consequences of initial misdeclaration for all purposes including to the Rules of evidence, even when the statute does not provide for it. The scrutiny of the statute does not afford any such scope in favour of the department beyond the listed consequences of extended period of limitation and re-looking at the

valuation. The departmental appeal is therefore devoid of merits and order of the Commissioner in the instant case deserves to be upheld.

8. Departmental appeal is rejected.

(Pronounced in the open court on 20.12.2024)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(C. L. MAHAR)
MEMBER (TECHNICAL)

Prachi