

**Customs, Excise & Service Tax Appellate Tribunal**

**West Zonal Bench at Ahmedabad**

REGIONAL BENCH-COURT NO. 3

**Customs Appeal No. 12460 of 2018-SMC**

(Arising out of OIA-AHD-CUSTOM-000-APP-063-18-19 dated 29/06/2018 passed by Commissioner of CUSTOMS-AHMEDABAD)

**Shah Foils Ltd**

1820/1, Santej Khatraj Road,  
Geb Sub Station, Santej, Kalol,  
GANDHINAGAR, GUJARAT

**.....Appellant**

*VERSUS*

**Commissioner of Customs-Ahmedabad**

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

**.....Respondent**

**APPEARANCE:**

Shri Manish Jain, Advocate for the Appellant

Shri M P Solanki, Assistant Commissioner (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), DR. AJAYA KRISHNA VISHVESHA**

**Final Order No. 10102/2025**

DATE OF HEARING: 29.01.2025  
DATE OF DECISION: 12.02.2025

**DR. AJAYA KRISHNA VISHVESHA**

This Appeal is directed against the Order-in-Appeal No. AHM-CUSTOM-000-APP-063-18-19 dated 29.06.2018, passed by the Commissioner (Appeals), Customs, Ahmedabad whereby the OIO dated 11.04.2017 the learned Commissioner (Appeals) Customs, Ahmedabad confirmed for confiscation of Rs. 3,15,200/- K.G. of "Prime Stainless Steel Hot Rolled Coils Grade-201" valued at Rs. 2,46,41,432/- imported under Bill of Entry No. 8799140 dated 07.03.2017 & 8799138 dated 07.03.2017 under section 111(d) of the Customs Act, 1962 and for giving option to the importer to redeem the goods on payment of fine of Rs. 12,50,000/- under Section 125 of the Customs Act, 1962. Besides this, penalty of Rs. 3,50,000/- was also imposed on the importer under Section 112(a) of the Customs Act, 1962.

1.1 M/s Shah Foils Ltd., Gandhinagar, the Appellant herein holding IEC No. 0804004501 filed three Bills of Entry No. 8799103, 8799140 and 8799138, dated 7.03.2017, for clearance of Prime Stainless Steel Hot Rolled Coils Grade 201, classifiable under sub heading 72201290 of the schedule to the Customs Tariff Act, 1975, through its Custom House Broker, M/s Airlift India P. Ltd. On importation, it filed the Bill of Entry on 07.03.2017 for clearance of the goods, after seeking permission from the Joint Commissioner, as the goods did not arrive within period of one month. The Stainless Steel Products (Quality Control Order) 2016, came into force with effect from 07.02.2017. According to the said order, after 07.02.2017, import of goods specified in the said Schedule to the said Order, would require certification of Bureau of Indian Standards (BIS). In these circumstances the question arose "whether the above mentioned (Quality Control Order), 2016 was attracted in this case or not".

1.2. The appellant contended that the date of shipment being prior to the date of the said Order coming into force, the said order is not attracted. The appellant vide its letter dated 31<sup>st</sup> March, 2017 requested for first check examination which confirmed the chemical composition mentioned in the mill test certificate of the supplier.

1.3. The appellant in order to expeditiously clear the consignment, waived the issuance of the show cause notice. The personal hearing was held on 06.04.2017. During the course of personal hearing, the appellant submitted a written submission, wherein, it was informed that the vessel carrying the said goods was likely to arrive on first of February but the same got delayed due to the repairing of the ship. As per decision of the Hon'ble High Court of Madhya Pradesh, the shipment date would be considered as the Bill of Lading date instead of cargo arrival date.

1.4. After hearing, the Additional Commissioner of Customs, Ahmedabad, passed the order-in-original No. 79/ADC-ML/AS/ICD-KHOD/O&A/2017, dated 11.04.2017, under which he ordered for confiscation of goods imported under the said three Bills of Entry, under Section 111(d) of the Customs Act, 1962 and imposed a redemption fine of Rs. 12,50,000/- under Section 125 of the said Act and also imposed a penalty of Rs. 3,50,000/- under Section 112(a) of the said Act. Being aggrieved and feeling dissatisfied with the impugned order, the appellant preferred an appeal before the Hon'ble Commissioner (Appeals), Customs at Ahmedabad.

1.5. The Commissioner (Appeals) Customs, Ahmedabad after affording opportunity of hearing, passed Order-in-Appeal No. AHM-CUSTM-000-APP-063-18-19, dated 29.06.2018, whereby, he imposed redemption fine of Rs. 12,50,000/- under Section 125 of the Customs Act, 1962 and also imposed a penalty of Rs. 3,50,000/- under Section 112(a) of the said Act.

1.6. Feeling aggrieved and dissatisfied with the impugned order dated 29.06.2018, the appellant preferred this appeal before this Tribunal.

2. Learned Counsel for the Appellant argued that the impugned order has been passed in violation to the principles of natural justice, as the adjudicating authority has failed to consider the submissions made by the appellant during the course of hearing.

2.1 The Learned Commissioner (Appeals) has concluded in Para 6 of the impugned order that the product imported by the appellant and classified under CTH 7220 is covered at Serial No. 2 of the Schedule to the Stainless Steel Products (Quality Control Order), 2016. The learned Counsel for the appellant submitted that the Stainless Steel Plate, Sheet and Strip specification as per IS 6911 are covered under Serial No. 2 of the above mentioned Schedule. The goods imported by the appellant are neither plates or sheets but are strips of grade 201 and was accordingly classified under CTH 72201290. Therefore, in order to be covered in Serial No. 2 of the said

Schedule, it has to be brought on record that the goods imported by appellant conformed to IS 6911. There is nothing on record that the goods imported by the appellant conformed to IS 6911. The Commissioner (Appeals) without ascertaining the IS of the product imported by the appellant, erroneously held that the goods imported by the appellant were covered under Serial No. 2 of the said Schedule. As the impugned order has been passed without ascertaining the facts as mentioned above, it is arbitrary, illegal and must be set aside.

2.2 The learned Counsel for the appellant further submitted that date of reckoning of imports is decided as per para 2.17 of Hand Book of Procedure 2015-20 (HBP) read with para 9.11 of the said Hand Book of Procedure. Clause (a) of para 2.17 of the HBP stipulates that the date of reckoning of import is decided with reference to the date of shipment/dispatch of the goods from supplying country and not the date of arrival of the goods at in Indian Port. Para 9.11 of HBP provides that in case of transportation by sea, the date affixed on the Bill of Lading will be reckoned as the date of shipment. In this case the Bill of Lading is dated 30.01.2017 and the BIS certification came in to force from 07.02.2017, therefore, imports made prior to 07.02.2017 would not require the certification of BIS. The Appellate Authority has negated the above submissions and held that the appellant was aware of the said order of ministry and had sufficient time to obtain the said certification which they did not do. The said order was extended for 180 days vide order dated 09.09.2016, which was again extended up to 242 days from 10.06.2016. Thus, it could not be ascertained as to whether the said order would be made applicable from 07.02.2017 onwards. The appellant was under bonafide belief that the said order is applicable to strips imported for making utensils. The said order would not be made applicable as the Bill of Lading was prior to coming in to force of the above mentioned order. The said order could not be made applicable for the said imports.

2.3 The learned Counsel for the appellant submitted that the adjudicating authority has erred in considering the date of filing of Bill of Entry as the date of reckoning the date of import. The Adjudicating Authority has correctly recorded that the delay was beyond the control of the appellant. Therefore, the date of import has to be considered as the date of shipment affixed on the Bill of Lading and on that date, the BIS Certification is not imposed and therefore, for all such imports prior to 07.02.2017, the BIS Certification is not required.

2.4 The Learned Counsel for the appellant placed reliance on the following decided cases :-

(a) **M/s. METRO BRIGHT BAR INDIA PVT. LTD.** Versus **COMMISSIONER OF CUSTOMS, MUNDRA** 2020 (373) E.L.T. 142 (Tri. - Ahmd.)

(b) **M/s. ROYAL IMPEX** Vs. **COMMISSIONER OF CUSTOMS, CHENNAI-II- 2019 (360) ELT 820, Madras-** 2019 (366) E.L.T. 820 (Mad.)

3. The Learned Authorised Representative, Shri M.P. Solanki, Assistant Commissioner, reiterated that the conclusion arrived at in the impugned order is liable to be confirmed and no interference is required in it. He vehemently argued that Stainless Steel Products (Quality Control Order) 2016 was known to the appellant at the time of import of goods on the date of shipment. Therefore, it was the duty of the appellant to have complied with the said order.

3.1. It was mentioned in the impugned order that order of Ministry of Steel had already been issued on 10.06.2016 and came into force subsequently on 07.02.2017 as per Ministry of Steel's order dated 06.02.2016. Thus, the appellant on the date of filing Bill of Lading was well aware about the said order of Ministry of Steel and BIS certificate and they had sufficient time to

obtain the same which they didn't do. Hence, contention of the Counsel for appellant is not tenable. Therefore, the subject goods are correctly covered under the Indian standards of BIS which is mandatory and are prohibited goods and can only be imported with BIS certification which the appellant failed to do. Accordingly, appellant is liable for confiscation and penalty which was rightly done.

4. I have heard learned Counsel for the Appellant and the learned Authorised Representative and perused the record. There is no controversy in so far as the shipment of goods on 13.01.2017 is concerned. On that date, Stainless Steel Products (Quality Control Order) 2016 had not come into force. The provisions of Stainless Steel Products (Quality Control Order) 2016 came into effect from 7<sup>th</sup> February, 2017. Therefore, in view of para 2.17 of the Foreign Trade Policy, 2015-2020, the date of import shall be reckoned as the date of shipment/ dispatch of goods. The Bill of Lading contains the date of January- 2017 when the Stainless Steel Products (Quality Control Order), 2016 was not in force. Therefore, in these circumstances, the appellant was not duty bound to affix BIS mark on the Stainless Steel imported by them.

4.1 In my view, the submission of the Authorised Representative that as the appellant was having full knowledge regarding the provisions of Stainless Steel Products (Quality Control Order) 2016 at the time of shipment/dispatch of the goods from the supplying country, therefore, they were duty bound to affix the BIS mark on the Stainless Steel, is not tenable and does not appear convincing.

4.2 It is pertinent to note here that in **M/s. METRO BRIGHT BAR INDIA PVT. LTD.** (Supra), the Hon'ble CESTAT Ahmedabad has held that the Stainless Steel Products (Quality Control Order) 2016 come into force on 07.02.2017. This order was not in force in the month of January- 2017, when the goods in question were shipped. Therefore, the appellant was not required to affix BIS mark on the product imported by them.

4.3 In view of the above discussion and observations, the impugned order dated 29.06.2018 is liable to be set aside and the appeal deserves to be allowed.

5. Consequently, the appeal is allowed and the impugned order dated 29.06.2018 is set aside.

*(Pronounced in the open court on 12.02.2025)*

**(DR. AJAYA KRISHNA VISHVESHA)**  
**MEMBER (JUDICIAL)**

Raksha