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

REGIONAL BENCH- COURT NO. 01

Customs Appeal No. 11096 of 2019

[Arising Out Of OIO-KND-CUSTM-000-COM-19-18-19 Dated- 26/03/2019 passed by the Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-KANDLA]

Pushpak Metal Corporation **.....Appellant**
5, Somabhai Chambers, Lunsawad, Dariapur,
AHMEDABAD, GUJARAT

VERSUS

C.C.-Kandla **.....Respondent**
CUSTOM HOUSE, NEAR BALAJI TEMPLE,
KANDLA, GUJARAT

APPEARANCE:
Shri. Rahul Gajera, Advocate for the Appellant
Shri. P. Ganesan, Superintendent (AR) for the Respondent

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

Final Order No. 10208/2025

DATE OF HEARING:25.03.2025
DATE OF DECISION:25.03.2025

In the instant case, the Learned Advocate pleads that he was considered as one of the co-accused in the matter in which M/s. Agarwal Metal & Allyos was the main accused and faced the allegation of undervaluation and on scrap imported from various countries including on some of the deals made by them as high seas sellers through various parties including the present appellant. He submits that the matter was supposed to be a bunch matter and required to be disposed of with the decision as reported in 2020 (2) TMI 644-CESTAT AHMEDABAD in the matter of M/s. Agarwal Metal and Alloys, Vipul Agarwal, Samir Agarwal, Ramesh Kumar H. Jain Vs. C.C.-Kandla decided on 13.02.2020, in which matter in the findings, the main accused as well as other co-accused who were similarly placed as this appellant, in so far as they are also sold certain consignments on high sea basis were absolved from various financial/obligations including duty, interest and penalty under the Customs Act, 1962. It was his plea therefore, that following the aforesaid decision appellant too deserved to be given the benefit being on the equal footing with other co-accused.

2. Learned AR has gone through the decision and fairly concedes that the matter is not different in case of the present appeal as was the case with some of the co-accused in the case law (cited supra). He however, reiterates the findings of the lower authority in the matter.

3. This Court has considered the matter. It finds that issue is no more res Integra and has been decided after elaborate arguments and findings, in the aforesaid matter which, inter alia, absolved the main accused in any charge of under valuation. There can be no reason to uphold the penalty against present appellant on the basis of similarity of facts. The relevant operative portion of the decision is contained in Para 11.9 to Para 12 reproduced below.

> *"11.9. Further, we also find that in respect of 166 Bills of entry value was already enhanced at the time of assessment and hence further proposal to re-enhance the value when the earlier assessment order has attained finality since no appeal/review was filed against such order, is not sustainable. There cannot be any reassessment of the said values, which had become final for want of appeal against the same. Our views are supported by judgments in case CC vs Lord Shiva Overseas-2005 (181) ELT 213, Malhotra Impex vs CC-2006 (203) ELT 561 and CC vs Paras Electronics -2009 (246) ELT 231. Similar view has been expressed by us in para 13 of the Sunland Metal order (supra) and we respectfully follow the same.*
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> *11.10. We also find that as in the case of Sunland Metals (supra), recorded in para 6 of the order, in Appellant's own case of 50 Bills of Entry the Commissioner (Appeal) who vide Order-in-Appeal dt. 09.09.2010 set aside the enhancement of value. The revenue's appeal against said order-in-appeal also stands dismissed as reported in Bharathi Rubber Lining & Allied Services P. Ltd. 2013 (287) ELT 124. In such case there is no ground to redetermine the value as the redetermination on basis of LME price already stands decided by the Tribunal against the revenue.*
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> *11.11. Coming to the issue raised by the Appellants that no additional duty of Customs is payable in respect of scrap as these are not*

> *manufactured product, we observe that the same has been held by us in favour of the Appellant in the case of Sunland Metal (supra) in para 12 of the order and hence the Appellant herein is entitled for all reliefs/exemption associated with the assessment.*
>
> *11.12. Since we are deciding the appeals on merit, we are not addressing the issue of limitation and the same is kept open*
>
> *12. In view of our above observations and findings, we are of the view that the demands confirmed against Mis AMA, confiscation of goods and penalties imposed upon Mis AMA is not sustainable. For the same reason the penalty imposed upon co-appellants namely Shri Samir Agarwal, Shri Vipul Agarwal and Ramesh Kumar H. Jain is also not sustainable. We thus set aside the impugned order and allow all the appeals before us with consequential reliefs to the Appellants. EH application is also disposed of".*

3.1 In view of the foregoing, This Court finds that the appeal of the appellant on penalty is liable to succeed, the penalty of Rs. 2,00,000/- imposed on the appellant under Section 112(b) of the Customs Act, 1962 is liable to be set aside. Same is ordered, accordingly.

4. Appeal is allowed with consequential relief.

(Dictated & Pronounced in the open court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Prachi